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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



HABIDECOR-INDUSTRIA TEXTIL PARA
HABITACAO, S.A. a/k/a HABIDECOR, S.A.,

10-14-2003

U.S. Patent & TMO/tm Mail Rpt Dt. #22

Opposer,

v.

Opposition No. 91157608

HABIDECOR USA, INC.,

Serial No. 78/182,657

Applicant.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

In response to the Notice of Opposition by Habitacao, S.A. ("Opposer") filed on August 12, 2003, and the Notice thereof mailed by the Trademark Trial and Appeal Board on September 4, 2003, Applicant, Habidecor USA, Inc., states as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation(s) in numerical Paragraph 1 of the Notice of Opposition and, therefore, denies such allegation(s) and puts Opposer to its proofs on such allegation(s).

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation(s) in numerical Paragraph 2 of the Notice of Opposition and, therefore, denies such allegation(s) and puts Opposer to its proofs on such allegation(s).

3. Applicant admits that it was incorporated on or about December 30, 1994. As to the remaining allegation(s) of Paragraph 3 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of those allegation(s) and, therefore, denies such allegation(s) and puts Opposer to its proofs on such allegation(s).

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation(s) in numerical Paragraph 4 of the Notice of Opposition and, therefore, denies such allegation(s) and puts Opposer to its proofs on such allegation(s).

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation(s) in numerical Paragraph 5 of the Notice of Opposition and, therefore, denies such allegation(s) and puts Opposer to its proofs on such allegation(s).

6. Applicant denies the allegation(s) of Paragraph 6 of the Notice of Opposition and puts Opposer to its proofs on such allegation(s).

7. Applicant admits that it applies its mark HABIDECOR to goods identified as "rugs." As to the remaining allegation(s) of Paragraph 7 of the Notice of Opposition, such allegations contain only legal conclusions to which no responsive pleading is required. To the extent factual allegations may be found in the remaining allegations of Paragraph 7 of the Notice of Opposition, any and all such allegations are hereby denied and puts Opposer to its proofs on such allegation(s)

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation(s) in numerical Paragraph 8 of the Notice of Opposition and, therefore, denies such allegation(s) and puts Opposer to its proofs on such allegation(s)

9. Applicant admits the allegations of Paragraph 9 of the Notice of Opposition.

10. All allegations in the Notice of Opposition not expressly admitted herein are denied.

RELIEF REQUESTED

Applicant requests:

1. that this Opposition proceeding be dismissed, and that Applicant's registration issue forthwith; and
2. that Applicant be afforded any and all other relief to which it might be entitled.

A duplicate copy of this Answer is enclosed herewith.

Please charge any fees which may be associated with this communication to Deposit Account No. 19-5425.

Respectfully submitted,

Dated: October 14, 2003

Lisa B. Lane
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Lisa B. Lane
Attorneys for Applicant

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HABITACAO, S.A. a/k/a HABIDECOR, S.A.,

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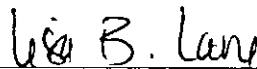
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CERTIFICATE OF SERVICE

The person whose signature appears below confirms that copies of the foregoing documents have been served upon the Opposer by depositing copies thereof with the United States Postal Service as First-Class Mail, in an envelope addressed to Opposer's counsel of record, David B. Kirschstein, Esquire, at Kirschstein, Ottinger, Israel & Schiffmiller, P.C., 489 Fifth Avenue, New York, NY 10017-6105, this 14th day of October, 2003.



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**APPLICANT'S MOTION FOR SUSPENSION OF
PROCEEDINGS PURSUANT TO 37 C.F.R. §2.117(a)**

Applicant herein, Habidecor USA, Inc. ("Applicant"), respectfully moves the Trademark Trial and Appeal Board for the issuance of an Order suspending the proceedings in the present opposition pursuant to 37 C.F.R. §2.117(a).

Applicant's supporting Brief and proposed Order are filed concurrently herewith.

Please charge any fees which may be associated with this communication to Deposit Account No. 19-5425.

Respectfully submitted,

Date: October 14, 2003

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**BRIEF IN SUPPORT OF APPLICANT'S MOTION FOR
SUSPENSION OF PROCEEDINGS PURSUANT TO 37 C.F.R. §2.117(a)**

The United States Trademark Trial and Appeal Board has the power to stay proceedings in the Patent and Trademark Office under appropriate circumstances. *See* 37 C.F.R. §2.117.

Applicant respectfully submits that a suspension of the pending opposition proceeding is appropriate, due to the fact that the parties involved therein are also involved in a civil action which will likely be dispositive of the issues currently before the Board. Namely, the civil action involves the same parties and the same marks, and since (1) the respective rights of the parties to use in commerce of the mark HABIDECOR, and (2) the question of likelihood of confusion, are central to both proceedings, the outcome of the civil action will have a direct bearing on the issues involved in the opposition.

Furthermore, because the jurisdiction of the Trademark Trial and Appeal Board does not extend to all of the issues presented in the civil action, and because a decision by the Board would not be binding on, but only advisory to, the District Court's decision, judicial economy warrants a consolidation of issues into one forum having the authority to hear all the issues presented.

FACTS

On August 12, 2003, Habitacao, S.A. ("Opposer") filed the present opposition with the U.S. Trademark Trial and Appeal Board, asserting that it will be damaged by the registration of the mark HABIDECOR, U.S. Application Serial No. 78/182,657.

Opposer has filed against Applicant a civil action in the United States District Court for the District of New Jersey. Such action was filed on March 28, 2003, has been assigned Civil Action No. 03-1361 (SRC), and charges Applicant with false designation of origin, unfair competition, and fraudulent trademark registration. Opposer, as plaintiff, charges Applicant with false designation of origin of goods under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and fraudulent registration of the HABIDECOR trademark under 15 U.S.C. § 1120, contends that it is the prior user and proper owner of the mark HABIDECOR, and seeks to enjoin Applicant from registering the mark HABIDECOR. A copy of the complaint as filed is attached hereto.

ARGUMENT

I. The Trademark Board Has the Discretion to Stay Proceedings

The Trademark Rules of Practice grant to the Trademark Board the discretion to stay proceedings in the Patent and Trademark Office ("PTO"). In particular, 37 C.F.R. §2.117(a) provides:

"Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action ... which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action...."

Furthermore, it is customary practice for the Trademark Board to stay registration proceedings pending the outcome of court litigation between the same parties involving related issues. *Alfred Dunhill of London, Inc. v. Dunhill Clothes, Inc.*, 130 U.S.P.Q. 412, 414 (C.C.P.A. 1961).

II. Opposer's Civil Action Will Have a Direct Bearing on the Question of the Rights of the Parties

As a basis for suspension, the Trademark Rules require that parties to a pending case be "engaged in a civil action which **may** have a bearing on the case." 37 C.F.R. §2.117(a). Thus, it is not required that the civil action completely or definitively resolve all the issues in the pending opposition. Nevertheless, Applicant submits that the civil action filed by Opposer will be dispositive of the issues raised in the present opposition, as it is expected that the ultimate issue, namely the right to use the mark HABIDECOR as to goods listed in the application, will be decided therein.

The civil action filed by Opposer involves the same parties, the same marks, and the same goods. Since the respective rights of the parties to use the mark HABIDECOR in commerce is at issue in the civil action, and since Opposer asserts its right to use the mark HABIDECOR in seeking an injunction against Applicant's registration of the same mark; and, further, since resolution of the issue of likelihood of confusion is central to both proceedings, the civil action will, if the relief requested is granted, have a bearing on the present opposition.

Furthermore, although the ultimate issue in the opposition proceeding is the right of Applicant to **register** the mark HABIDECOR, the right to **use** the mark is implicit in that right:

Rights in trademarks grow out of their use. Use is a prerequisite to ownership, and use in commerce by the owner is a prerequisite to registration. Although the ultimate finding of the tribunals of the Patent Office in proceedings such as these is the right of an applicant to register, nevertheless there must be a finding of the

right to use in commerce before that ultimate finding can be made. The Court, in the civil action, will necessarily determine this preliminary question of the right to use, and that determination will form the basis of the ultimate finding of the Office Simply stated, if the Court concludes that [the applicant] has the right to use its mark in commerce, it has a right to register; if the Court concludes that [the applicant] has no right to use its mark, it has no right to register.

Tuvache, Inc. v. Emilio Pucci Perfumes Inc., 152 U.S.P.Q. 574, 575-6 (S.D.N.Y. 1967) (citing *Squirrel Brand Co. v. Barnard Nut Co.*, 101 U.S.P.Q. 340 (Comm. Pat. 1954)); see also, *Townley Clothes Inc. v. Goldring, Inc.* 100 U.S.P.Q. 57, 58 (Comm. Pat. 1953) ("since priority of use is in issue in determining the right to register; and since the right to register grows out of the right to use; and since registration may be issued only to the owner of a mark, ... the findings of the Court in connection with these issues may be determinative of the same issues in [the opposition]").

At the very least, the civil action will have a "direct bearing on the question of the rights of the parties herein," which alone is enough to support a suspension of the opposition proceedings. See *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (T.T.A.B. 1971); see also, *The Other Telephone Company v. Connecticut National Telephone Company, Inc.*, 181 U.S.P.Q. 125, 126 (T.T.A.B. 1974) ("[t]he only question for determination is whether the outcome of the civil action will have a bearing on the issues involved in the opposition proceeding").

III. The Action Requested By This Motion Is In Accord With Prior Decisions on the Same Issue

The action requested by this motion is in accord with prior decisions concerning the issue of suspending proceedings in the PTO, pending the outcome of a civil case involving the same parties. For instance, in *The Other Telephone Company v. Connecticut National Telephone Company, Inc.*, 181 U.S.P.Q. 125, 126 (T.T.A.B. 1974), the Board explained that, because the

plaintiff was requesting the court to determine the respective rights of the parties to use in commerce the mark at issue or any mark confusingly similar thereto, the final determination of the civil suit would directly affect the resolution of the issue of likelihood of confusion which was involved in the proceeding before the Trademark Trial and Appeal Board. Accordingly, the motion was granted and the opposition proceedings were suspended until final disposition of the civil suit.

Furthermore, in *The Other Telephone Company v. Connecticut National Phone Co.*, 181 U.S.P.Q. 779, 782 (Comm. Pat. 1974), the Commissioner, acting on the applicant's petition from the decision of the Trademark Trial and Appeal Board in the above noted proceedings, stated:

Since the Trademark Trial and Appeal Board is an administration tribunal vested with authority to hear and decide only those controversies specifically defined in the Trademark Act of 1946, its jurisdiction could not extend to all of the controversies in issue in the Federal District Court. Consequently, judicial economy warrants a consolidation of issues, including those which may be presented for determination by the Board or which may have a bearing on an issue before the Board, into one forum vested with the authority to hear all issues presented. It is not unreasonable, in such a case, that proceedings be stayed in the administrative tribunal pending the final disposition of issues by the other forum

....

Furthermore, while a decision of a Federal District Court would be binding on the Patent Office, a decision by the Trademark Trial and Appeal Board would be merely advisory with respect to the disposition of issues presented in a Federal District Court.

See also, Tokaido v. Honda Associates Inc., 179 U.S.P.Q. 861, 862 (T.T.A.B. 1973)

("notwithstanding the fact that the Patent Office proceeding was the first to be filed, it is deemed to be the better policy to suspend proceedings herein until the civil suit has been finally concluded"); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (T.T.A.B. 1971) (outcome of civil action may in fact completely resolve all of the issues); *Squirrel Brand Co. v. Barnard Nut Co.*, 101 U.S.P.Q. 340 (Comm. Pat. 1954) (court in civil action for infringement "will necessarily determine [the] preliminary question of the right to use, and that determination will form the basis of the ultimate finding of the Office"); and *Townley Clothes Inc.*

v. *Goldring, Inc.* 100 U.S.P.Q. 57, 58 (Comm. Pat. 1953) (where the issues in a civil action involve ownership of and the right to use a mark, and the court's findings will be determinative of the same issues so far as the right to register is concerned, it is deemed to be the sounder practice to suspend the Patent Office proceedings pending termination of the court action).

IV. A Narrower Trademark Board Decision Will Likely Be Inconclusive and Merely Advisory

It is further submitted that a denial of this motion will likely result in a proceeding conducted in the PTO which will **not** be determinative of the civil action. On the other hand, if the motion is granted, the proceeding before the District Court **will** be determinative of the proceeding in the PTO.

Not only would a PTO decision not be determinative of the issues in the civil action challenging the right to use the mark HABIDECOR, it also would not be binding upon the District Court. Thus, proceeding in the PTO would in no way promote judicial efficiency; nor would it serve to avoid unnecessary duplication of effort. As explained by the district court in *Tuvache*, 152 U.S.P.Q. at 575-6 (S.D.N.Y. 1967) (wherein the court denied plaintiff's motion to stay the civil action pending final determination by the Board):

Registration under the federal trademark statutes, or refusal of the Patent Office to register, would not create any new rights or confer any greater rights than those already possessed at common law without registration. Both parties would be free thereafter to assert whatever rights they might have at common law or in equity with respect to the use of the challenged trademarks. Registration would serve merely to give jurisdiction to the federal courts regardless of diversity or jurisdictional amount and accord certain procedural advantages to the registrant Regardless which party were to prevail in the pending Patent Office proceedings, therefore, we may expect further litigation in the federal courts, either by prosecution of the present case or by appeal from the Trademark Trial and Appeal Board In either event the court would be required to review the same evidence, and make its own determination If the Court, on the other hand, proceeds first, its

determination of the common issues will be followed by the Patent Office in deciding whether the trademarks may be registered.

(cited by *Questor Corp. v. Wold Industries, Inc.*, 194 U.S.P.Q. 141, 143 (D.Minn. 1976) (value of a Patent Office determination of the right to register is limited by the fact that such determination is not res judicata or binding on the court); *Allied Mills*, 188 U.S.P.Q. at 509 (D. Ind. 1975) (the question of registrability is only one aspect of the question of infringement, which in turn is only one aspect of the claim of unfair competition); and *Tokaido*, 179 U.S.P.Q. at 862 (T.T.A.B. 1973) ("while a decision by the District Court would be binding on the Patent Office, a decision by the Trademark Trial and Appeal Board would only be advisory in respect to the disposition of the case pending in the District Court"))).

In *Goya Foods Inc. v. Tropicana Products Inc.*, 6 U.S.P.Q.2d 1950 (2nd Cir. 1988), the Second Circuit aptly summarized the reasons why resolution of PTO proceedings would be inconclusive with respect to a pending civil action:

[T]he outcome of the PTO registration proceeding would not affect the legal standard applied in the infringement claim or the scope of the required fact-finding. The District Court would still independently have to determine the validity and priority of the marks and the likelihood of consumer confusion as to the source of the goods, [citations omitted], with this latter issue to be resolved not by reference to a registration determined by the PTO but by application of the multi-factor balancing test set forth in *Polaroid Corp. v. Polarad Electronics Corp.* [citation omitted].

Id. at 1954; see also, *MCA Inc. v. Mid-Continent Adjustment Co.*, 8 U.S.P.Q.2d 1840 (N.D. Ill. 1988) ("Although many of the issues that the PTO considers in opposition proceedings resemble the issues involved in infringement actions, this court may be faced with many of the same issues in the litigation regardless of a decision in the opposition proceedings."); *The Other Telephone*, 181 U.S.P.Q. at 782 (Comm. Pat. 1974) ("judicial economy warrants a consolidation of issues ... into one forum vested with the authority to hear all issues presented.... [W]hile a decision of a Federal District Court would be binding on the Patent Office, a decision by the Trademark Trial

and Appeal Board would be merely advisory with respect to the disposition of issues presented in a Federal District Court.").

The Court in *Goya* further confirmed that likelihood of confusion was not an issue which necessarily should be decided by the PTO, but an issue the courts were accustomed to deciding:

Likelihood of confusion ... is a legal standard with which courts have long-standing familiarity in resolving suits arising under both the Lanham Act and the common law of trademark infringement and unfair competition [T]he legal question in trademark registration proceedings -- particularly those involving opposition on the grounds of consumer confusion -- is within the conventional competence of the courts, and the judgment of a technically expert body is not likely to be helpful in the application of these standards to the facts of a particular case.

Id. at 1954.

VI. Conclusion

In view of the above arguments, and particularly in the interest of promoting judicial economy and avoiding unnecessary duplication of effort, Applicant respectfully submits that suspension of the current opposition proceedings is warranted.

Respectfully submitted,

Date: October 14, 2003

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Of Counsel

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CARLOS ABREU, individually and
derivatively upon behalf of
HABIDECOR, USA, INC., and
HABIDECOR, S.A.,

Plaintiffs,

-against-

CELSO DE LEMOS ESTEVES,
GINADO-PRODUCAO E
COMERCIALIZACAO DE TEXTEIS, S.A.,
ABYSS EUROPEAN TOWELS, INC.,
STEVEN DREW, INCORPORATED,
A&H BATH BOUTIQUES, INC.,
KATIE JOHNSON-HILL,
STEVEN DREW AUERBACH
a/ka STEVEN DREW and
HABIDECOR, USA, INC.,

Defendants.

Civil Action No. 03 - 1361 (SRC)

**VERIFIED COMPLAINT
AND JURY DEMAND**

Plaintiffs Carlos Abreu, a citizen of Belgium residing at Braambos 2 9600, Ronse,
Belgium, acting on his own behalf and derivatively upon behalf of Habidecor USA, Inc.,
a New Jersey corporation having its principal place of business at 92 North Main Street,

Building 3C, Windsor, New Jersey 08651-0429, and Habidecor, S.A., a Portuguese corporation with its principal place of business at Zona Industrial de Mundao, P-3500-570, Mundao, Visau, Portugal, acting by and through their counsel, Schrader & Schoenberg, LLP, as and for their Verified Complaint against defendants Celso De Lemos Esteves, a citizen of Belgium residing at 11 Rues de Wattines, B 7812, Ligne, Belgium, Ginado-Producao e Comercializacao de Texteis, S.A., a Portuguese corporation having its principal place of business at Zona Industrial da Adica Tondela, P-3460, Portugal, Abyss European Towels, Inc., a New Jersey corporation having its principal place of business at 92 North Main Street, Building 3C, Windsor, New Jersey 08651-0429, Steven Drew, Incorporated, a California corporation having its principal place of business at 230 Fifth Avenue #1915, New York, New York 10001, A&H Bath Boutiques, Inc., a New York corporation having its principal place of business c/o Steven Drew, Inc., 230 Fifth Avenue #1915, New York, New York 10001, Katie Johnson-Hill, a citizen of the State of New Jersey having an address c/o Habidecor U.S.A., Inc., 92 North Main Street, Building 3C, Windsor, New Jersey 08651-0429 and Steven Drew Auerbach a/k/a Steven Drew, a citizen of the State of New York having an address c/o Steven Drew, Inc., 230 Fifth Avenue #1915, New York, New York 10001 allege as follows:

THE NATURE OF THIS ACTION

1. This is an action for the false designation of origin of goods under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), for cancellation, revocation or assignment of the "HABIDECOR" trademark under 15 U.S.C. § 1119 and for civil damages for the fraudulent registration of the "HABIDECOR" trademark under 15 U.S.C. § 1120. Plaintiffs also assert pendent state law claims for violation of N.J.S.A. 56:4-1, for

common law unfair competition, for common law breaches of fiduciary duty and breach of contract and for shareholder oppression under the New Jersey Shareholder Oppression Statute, N.J.S.A. § 14A:12-7.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367. Plaintiffs' claims are predicated upon the Trademark Act of 1946, as amended, 15 U.S.C. § 1051, *et seq.*, and related claims under the statutory and common law of the State of New Jersey.

3. Venue is properly found in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district. In addition, as more particularly described below, certain of the parties reside in this judicial district or are doing business in and may be found in this judicial district.

THE PARTIES

4. Plaintiff Carlos Abreu ("Plaintiff" or "Mr. Abreu") is a citizen of Belgium residing at Braambos 2 9600, Ronse, Belgium. Mr. Abreu is a founder and director and controls 50% of the shares of plaintiff Habidecor, S.A. through various family-owned holding companies. He is also a founder, director and direct 50% shareholder of derivative plaintiff Habidecor, USA, Inc. Mr. Abreu is the President of plaintiff Habidecor, S.A. and corporate secretary of derivative plaintiff Habidecor U.S.A., Inc.

5. Plaintiff Habidecor, S.A. is Portuguese corporation with its principal place of business at Zona Industrial de Mundao, P-3500-570, Mundao, Viseu, Portugal. The

three (3) directors of Habidecor, S.A. are plaintiff Carlos Abreu, his daughter, non-party Carmen Abreu, and defendant Celso De Lemos Esteves.

6. Derivative plaintiff Habidecor, USA, Inc. is a New Jersey corporation with its principal place of business at 92 North Main Street, Building 3C, Windsor, New Jersey 08651-0429. There are only two (2) directors of Habidecor USA, Inc., plaintiff Carlos Abreu and defendant Celso De Lemos Esteves.

7. Upon information and belief, defendant Celso De Lemos Esteves is a citizen of Belgium residing at 11 Rues de Wattines, B 7812, Ligne, Belgium. Mr. De Lemos Esteves is a co-founder, director and indirect 50% shareholder through various family-owned holding companies of plaintiff Habidecor, S.A. and a founder, director and direct 50% shareholder of derivative plaintiff Habidecor, USA, Inc. Mr. De Lemos Esteves is a Vice-President of plaintiff Habidecor, S.A. and the President of derivative plaintiff Habidecor USA, Inc.

8. Upon information and belief, defendant Ginado-Producao e Comercializacao de Texteis, S.A. ("Ginado, S.A.") is a Portuguese corporation having its principal place of business at Zona Industrial da Adica Tondela, P-3460, Portugal. Upon further information and belief, defendant Ginado is owned by defendant Celso De Lemos Esteves, his brother and their families, and is controlled by defendant Celso De Lemos Esteves.

9. Upon information and belief, defendant Abyss European Towels, Inc. is a New Jersey corporation having its principal place of business at 92 North Main Street, Building 3C, Windsor, New Jersey 08651-0429. Upon information and belief, defendant

Abyss European Towels, Inc. is controlled by defendant Celso De Lemos Esteves and is a licensee of the "ABYSS" name from defendant Ginado, S.A.

10. Upon information and belief, Steven Drew Incorporated is a California corporation having its principal place of business at 230 Fifth Avenue #1915, New York, New York 10001.

11. Upon information and belief, defendant A&H Bath Boutiques, Inc. is a New York corporation having its principal place of business c/o Steven Drew, Inc., 230 Fifth Avenue #1915, New York, New York 10001.

12. Upon information and belief, defendant Katie Johnson-Hill is a citizen of the State of New Jersey having an address c/o Habidecor U.S.A., Inc., 92 North Main Street, Building 3C, Windsor, New Jersey 08651-0429. Defendant Johnson-Hill is the corporate secretary of derivative plaintiff Habidecor USA, Inc. and the managing agent of Habidecor USA's Windsor, New Jersey office. Upon information and belief, defendant Johnson-Hill has assumed the title of "Vice President of U.S. Operations" of derivative plaintiff Habidecor USA, Inc., although there is no provision in the by-laws of Habidecor USA for any such position. Upon further information and belief, defendant Johnson-Hill is also the Vice President of U.S. Operations of defendant Abyss European Towels, Inc. and a shareholder in defendant Abyss European Towels, Inc.

13. Upon information and belief, defendant Steven Drew Auerbach a/k/a Steven Drew is a citizen of the State of New York having an address c/o Steven Drew, Inc., 230 Fifth Avenue #1915, New York, New York 10001. Upon information and belief, defendant Steven Drew Auerbach is an officer, shareholder or director of defendants Steven Drew, Incorporated, Abyss European Towels, Inc. and A&H Bath

Boutiques, Inc. Mr. Drew is a prominent designer and is a highly-compensated consultant employed by Habidecor USA, Inc. to develop products especially tailored to the U.S. markets and to oversee Habidecor USA's trade show and consumer advertising and marketing efforts. In June 2002, Habidecor USA, Inc. entered into a new contract with Mr. Drew and his company Steven Drew, Incorporated, pursuant to which Mr. Drew agreed to devote substantially all of his time to rendering design, advertising and marketing services to Habidecor USA, Inc. In addition to receiving a salary of \$55,000 per year and being provided a Habidecor USA, Inc. credit card, Mr. Drew collects a commission equal to 0.5% of Habidecor USA, Inc.'s gross sales, even though Mr. Drew is not employed in a sales capacity.

STATEMENT OF FACTS

A. The History of Habidecor and the Famous "HABIDECOR" Trademarks

14. Habidecor, S.A. (pronounced "a-BEED-a-core") is in the business of designing, manufacturing, distributing and selling unique high-quality luxury bath and accent rugs. Habidecor, S.A. was founded by plaintiff Carlos Abreu and defendant Celso De Lemos Esteves in 1979. Originally, Habidecor manufactured its rugs in a garage with one machine and one employee. In 1985, Habidecor, S.A. opened a thoroughly modern manufacturing facility in Viseu, Portugal. Today, this facility employs more than 150 workers, who manufacture more than one million rugs each year. The rugs designed and manufactured by Habidecor, S.A. combine cotton, silk and other natural fibers to create luxurious bath rugs of unmatched feel, or "hand." A proprietary Habidecor acrylic, which is fluffier, richer and softer than the acrylic used by other manufacturers, gives a "quick dry" property to Habidecor's cotton and linen rugs. Habidecor's "Traditional

Classics" line of rugs and custom orders are individually manufactured on state-of-the-art table looms operated by trained craftsmen.

15. Habidecor S.A.'s luxurious bath and accent rugs tapped an unfilled niche market for high-end bath and accent rugs, and its reputation for producing the highest-quality goods quickly spread throughout Europe. Habidecor has registered the "HABIDECOR" name trademark and logo (a lower case letter "h" superimposed on the silhouette of a house superimposed on the silhouette of a globe) in Portugal, Japan, Austria, the Benelux countries, Spain, France, Italy and Switzerland, and the Habidecor name and logo have acquired secondary meaning and become associated with the highest-quality bath and accent rugs throughout the world. True and correct copies of Habidecor S.A.'s trademark registrations are attached hereto as Exhibit A.

16. Habidecor, S.A. introduced its high-quality luxury bath and accent rugs to the United States in 1991. As occurred in Europe, Habidecor, S.A.'s rugs tapped an unfilled market and created an instant sensation. Habidecor, S.A. initially sold its rugs at trade shows and exhibitions in the United States, including the Bath, Bed and Linen Show in New York City in 1990, 1991 and 1992, the Bath, Bed, Linen, Curtain and Drapery Show in San Francisco in 1990 and the Heimtextil America exhibition in Atlanta in 1992. A true and correct excerpt from the LDB Interior Textiles 1992 Annual Directory, a leading textile industry publication, featuring Habidecor, S.A.'s products is attached hereto as Exhibit B.

17. Habidecor, S.A.'s U.S. sales increased exponentially between 1992 and 1994: in 1992 Habidecor, S.A. sold approximately \$3,716 worth of goods in the United States; in 1993, Habidecor, S.A. sold approximately \$23,486 worth of goods in the

United States; and in 1994, Habidecor, S.A. sold approximately \$82,201 worth of goods in the United States. Significant sales efforts were made to develop contacts and increase sales in the early years.

18. In 1995, the two shareholders of Habidecor, S.A., plaintiff Carlos Abreu and defendant Celso De Lemos Esteves, founded derivative plaintiff Habidecor USA, Inc. to further develop the U.S. market for its products and to oversee Habidecor, S.A.'s U.S. force of independent sales agents. Today, Habidecor, S.A.'s rugs are carried in the finest home furnishing stores in the United States, and sales in the United States account for some 30% of Habidecor, S.A.'s total sales.

19. Habidecor, S.A. and Habidecor USA, Inc. operate as part of a single vertically-integrated worldwide enterprise. Habidecor, S.A. employs trained artisans, who are responsible for the basic design of Habidecor, S.A.'s bath and accent rugs, and "stylistes" (fashion designers who are responsible for designing Habidecor, S.A.'s product catalogs, display booths, packaging, labels and overall "image") at nonparty Vitex Europe, sprl, a nonparty Belgian corporation also jointly owned by holding companies controlled plaintiff Carlos Abreu and defendant Celso De Lemos Esteves.. (Belgium has been the center of European rug making for more than 300 years, and its artisans are world renowned for their rug designs.) The rugs are manufactured in Portugal, which has a long tradition of textile manufacturing. Habidecor, S.A. sells less than 5% of its rugs in Portugal. Some fifty (50%) of Habidecor, S.A.'s total production is distributed in Europe (excluding Portugal) and the rest of the world (excluding the United States) through nonparty Vitex Europe, S.A.. The remaining 45%, by value, of Habidecor, S.A.'s total production is sold in the United States through a network of

independent sales agents maintained by derivative plaintiff Habidecor USA, Inc., or as is described below, directly by Habidecor USA, Inc. in a retail "store within a store" located in a facility owned by ABC Carpets in New York City. The vertically integrated structure of the Habidecor enterprise allows Habidecor, S.A. to control all aspects of the process from design, manufacture and distribution to retail sales, and gives Habidecor, S.A. a significant competitive advantage. The end result is that Habidecor USA, Inc. can sell high-quality luxury bath and accent rugs to U.S. consumers at a lower price than its non-vertically integrated competition.

20. Plaintiff Carlos Abreu is the President and driving force behind Habidecor, S.A.'s worldwide success. He has been responsible for acquiring and implementing the cutting-edge rug manufacturing technology which has enabled Habidecor, S.A.'s Viseu, Portugal manufacturing facility to operate so efficiently, he has been responsible for soliciting major new corporate accounts such as five-star hotels, and he has expanded Habidecor, S.A.'s overall sales into promising new markets, including Austria, Germany, the United Kingdom, Saudi Arabia, Korea, the Arab Emirates, Taiwan, Hong Kong, Lebanon, Japan, Kuwait and Cyprus. Plaintiff Abreu has devoted his full-time efforts to managing the factory where the rugs are produced in Viseu, Portugal and developing the business of Habidecor, S.A. In recent years, he has spent more than 120 days away from his home in Ronse, Belgium each year, both at the factory in Viseu and traveling around the world, visiting potential clients and exploring new markets for Habidecor S.A.'s products.

21. By contrast, defendant Celso De Lemos Esteves's role has been limited to supervising networks of independent sales agents in the United States, Portugal, France,

Switzerland, Italy and Belgium, which are all established sales territories. Sales for the territories supervised by De Lemos Esteves result in significantly higher effective third party commission costs. Commission cost represent some 9.7% of sales managed by De Lemos Esteves compared to some 2.4 % sales managed by Abreu. Defendant De Lemos Esteves has acted primarily as an "absentee owner," visiting the factory in Portugal and sales offices in his countries of responsibility only once or twice each year.

B. The History Of Abyss And The Misappropriation Of The "HABIDECOR" Name And Habidecor USA's Facilities, Employees And Sales Force

22. In or about December 1995, defendant Celso De Lemos Esteves approached plaintiff Carlos Abreu and suggested expanding Habidecor, S.A.'s product line into high-quality luxury towels. This would have been a natural extension of Habidecor, S.A.'s line of luxury bath and accent rugs. Plaintiff Carlos Abreu agreed with defendant De Lemos Esteves' proposal.

23. Six months later, in June 1996, defendant De Lemos Esteves again approached plaintiff Abreu. To plaintiff Abreu's surprise, defendant De Lemos Esteves informed him that he had changed his mind and no longer wanted to sell and produce towels, bathrobes and other bath accessories as part of Habidecor, S.A.'s business or under the "HABIDECOR" name, and instead wanted to manufacture and sell those products as part of an entirely separate venture founded by defendant Celso De Lemos Esteves and his brother. Plaintiff Abreu consented to the separate venture and understood that defendant De Lemos Esteves' towel manufacturing venture would be operated independently from Habidecor, S.A.'s business.

24. Even though defendant Celso De Lemos Esteves had previously informed plaintiff Abreu that he did not want to sell towels, bathrobes or other bath accessories

under the "HABIDECOR" name, defendant Celso De Lemos Esteves caused Habidecor, S.A. to spend nearly \$200,000 between July 5, 1996 and December 31, 1996 to acquire towel-making machinery for its Viseu, Portugal facility. In or about April 1997, defendant De Lemos Esteves and his brother formed defendant Ginado, S.A. and transferred the towel-making equipment to Ginado S.A.'s own manufacturing facility in the nearby town of Tondela, Portugal. It was not until after plaintiff Abreu discovered that defendant De Lemos Esteves had purchased the towel-making equipment for Ginado, S.A. with Habidecor, S.A.'s funds that Ginado, S.A. agreed to reimburse the cost of the equipment to Habidecor, S.A. Ginado did not complete the repayment of the funds advanced by Habidecor, S.A. until almost one year later, in December 1997.

25. Upon information and belief, defendant Ginado, S.A. began selling a line of towels, bath robes and other accessories under the trade name "ABYSS EUROPEAN TOWELS" in or about 1997.

26. Upon information and belief, on or about November 22, 2000, defendant Ginado, S.A. formed Abyss European Towels, Inc., a California corporation having its principal place of business at 1433 North Orange Grove, Los Angeles, CA 90046, for the purpose of distributing "ABYSS" brand towels, robes and other accessories in the United States.

27. Upon information and belief, defendant Celso De Lemos Esteves' initial attempts to sell ABYSS brand towels, robes and other accessories in the United States were unsuccessful. In or about July 2002, defendant De Lemos Esteves closed down his California sales operation and, acting without the prior knowledge or consent of plaintiff Abreu, moved his U.S. operations into the same space leased by Habidecor USA, Inc.

On or about February 3, 2002, defendant Celso De Lemos Esteves reincorporated Abyss European Towels, Inc. as a New Jersey corporation with its principal place of business at 92 North Main Street Building 3C, Windsor, New Jersey 08651-0429 ("Abyss"). The registered agent of defendant Abyss European Towels, Inc. is Steven Drew.

28. Upon information and belief, unbeknownst to plaintiff Carlos Abreu, defendant Celso De Lemos Esteves thereafter hired Steven Drew Allerbach a/k/a Steven Drew Auerbach a/k/a Steven Drew, Habidecor USA, Inc.'s chief designer, to be Director of the new corporation. Upon further information and belief, defendants also used the services of Mia Deknudt and Axel Huguet, two of the chief "stylistes" (image designers) employed by Vitex Europe (an affiliate of Habidecor, S.A.) to design and photograph the product catalogues featuring "ABYSS" brand towels, robes and other accessories. As is set forth below, the hiring of Mr. Drew, the services of Ms. Deknudt and Ms. Huguet was part of a conscious effort by defendant Celso De Lemos Esteves to give Abyss's towels a "look and feel" similar to the bath and area rugs manufactured by Habidecor, S.A. and sold by Habidecor USA, Inc.

29. On July 31, 2002, defendant Abyss European Towels, Inc. sent all of its existing customers an announcement stating that it had relocated its offices. In this announcement, defendant Abyss European Towels, Inc. incorrectly held itself out as "a sister company of Habidecor USA, Inc." and stated that its new offices would be located "near those of Habidecor." In fact, there is no corporate connection between Habidecor USA, Inc. and Abyss European Towels, Inc., although upon information and belief, they have one common shareholder – defendant Celso De Lemos Esteves. Furthermore,

Abyss's new offices are not "near" Habidecor USA's offices – they are located *within* space rented by Habidecor USA, Inc.

30. Since closing the California offices of Abyss European Towels, Inc. and moving the offices into the space occupied by Habidecor USA, Inc., defendant Celso De Lemos Esteves has, for all practical purposes, merged the operations of the two companies. Upon information and belief, many of Habidecor USA's employees and/or consultants, including, inter alia, defendants Drew and Johnson-Hill are also employed by defendant Abyss European Towels, Inc. Additionally Abyss European Towels Inc has used the services of Ms Deknudt and Ms Huguet. These common employees are paid on a single payroll under a "common paymaster" arrangement, and there is no mechanism in place to ensure that Habidecor USA, Inc. is not paying for services actually rendered by these employees to Abyss European Towels, Inc. Nor is there a formal sublease in place between Abyss European Towels, Inc. and Habidecor USA, Inc. for the space occupied by Abyss, and there is no agreement in place for allocating items of overhead expense between Habidecor and Abyss though certain costs are being reimbursed. In effect, Habidecor USA and plaintiff Carlos Abreu are subsidizing the operations of an entirely unrelated company, Abyss.

31. Abyss has also completely co-opted Habidecor USA's network of independent sales agents, which were developed over many years of effort. Upon information and belief, all of Habidecor USA's independent sales agents are now also licensed to sell Abyss brand towels, robes and other accessories, further reinforcing the false impression among retailers that Habidecor USA and Abyss are "sister companies." By co-opting Habidecor USA's entire independent sales force, Abyss has been able to

“get its foot in the door” with many retailers with whom derivative plaintiff Habidecor USA spent many years developing wholesale relationships. Because Habidecor, S.A. and Habidecor USA, Inc. have no control over the quality of the goods manufactured and sold or the customer service offered by Abyss, there is the real possibility that Habidecor, S.A.’s and Habidecor USA, Inc.’s reputations among U.S. retailers will be irreparably harmed by this association.

32. Moreover, defendants have been actively using the “HABIDECOR” name to promote the sales of Abyss’s products. In or about October or November 2002, defendant Celso De Lemos Esteves caused derivative plaintiff Habidecor USA, Inc. and defendant Abyss European Towels, Inc. to enter into a joint license agreement with ABC Home Furnishings, Inc. (the “ABC License Agreement”), which had previously been a important customer of Habidecor USA, Inc. Pursuant to the ABC License Agreement, Habidecor USA, Inc. and Abyss became jointly liable for the leasing a major portion of an entire floor of a department store through at least January 1, 2005 for the purpose of operating a “store within a store” under the name “Abyss & Habidecor at ABC” or “A&H Bath Boutique at ABC Carpet & Home.” This joint boutique was licensed to sell “towels, bath and accent rugs, bathrobes and loungewear in any construction and with any fiber content.” The ABC License Agreement was executed by defendant Katie Johnson-Hill both as “Vice President of U.S. Operations” of Habidecor USA, Inc. and as “Vice President of U.S. Operations” of Abyss European Towels, Inc. A true and correct copy of the ABC License Agreement is attached hereto as Exhibit C.

33. Although, upon information and belief, Habidecor USA and Abyss share the expense of renting and operating this “store within a store” equally, the volume of

Abyss merchandise displayed in this boutique is greater than the volume of Habidecor USA merchandise by an approximately 4:1 ratio. Furthermore, although the "HABIDECOR" name and logo are prominently displayed on the signage in the boutique, the "HABIDECOR" name and logo appear directly over a display of towels – a product which Habidecor, S.A. does not manufacture and which Habidecor USA, Inc. is not authorized to sell. This arrangement creates the misleading impression in the mind of the consuming public that Habidecor, S.A. manufactures, sponsors, promotes or authorizes the towels manufactured by Abyss. A true and correct photograph of the "Abyss and Habidecor" "store within a store" at ABC Home Furnishings is attached hereto as Exhibit D.

34. Upon information and belief, defendants Celso De Lemos Esteves, Johnson-Hill and Drew formed defendant A&H Bath Boutiques, Inc. to promote further joint marketing efforts between derivative plaintiff Habidecor USA, Inc. and defendant Abyss European Towels, Inc. As part of a joint marketing effort for Habidecor USA, Inc. rugs and Abyss towels, Habidecor, S.A. and Abyss European Towels, Inc. were both listed as exhibitors in the "Rug Pavilion" at the New York Home Textiles Show held at the Javits Center in New York City on October 11 to 18, 2002. Upon information and belief, Habidecor USA and Abyss shared a booth at this important trade show, although the entire cost of the booth was later charged back to Habidecor, S.A.

35. The defendants have even gone so far as to include pictures of Abyss's towels and robes in Habidecor USA's product catalogues. In 2002, Habidecor USA produced a small (8 inch square) catalogue which, upon information and belief, was distributed to passers-by at the New York Home Textiles Show. Almost every single

page in this catalogue features a towel or a model wearing a bathrobe, although Habidecor, S.A. does not manufacture towels or robes. Upon information and belief, the towels and robes featured in this catalogue were manufactured by defendant Abyss. Upon further information and belief, Habidecor, S.A. was charged for the expense of producing these catalogues. Notably, no Habidecor bath rugs have ever been featured in Abyss's catalogues.

36. Moreover, defendant Abyss has consciously designed its towels, bath robes and other accessories to imitate the trade dress of the bath rugs manufactured by Habidecor, S.A., although, ironically, Abyss has stated falsely that Habidecor, S.A.'s rugs were designed to be color coordinated with its towels. Thus, on October 7, 2002, when Steven Drew announced the planned opening of the joint boutique at ABC, he was quoted in Home Textiles Today (an important on-line trade daily) as saying that the piece-dyed linen and cotton manufacturing process used by Habidecor, S.A. and later copied by Abyss "will also be offered in a new coordinating bath rug from Habidecor, the sister company of Abyss." A copy of the Home Textiles Today article is attached hereto as Exhibit E. Several retailers have also started stating in their advertising that "our Habidecor bath rugs are now color coordinated with the Abyss towels from Portugal." Upon information and belief, defendant Abyss has instructed its salespeople and retailers to stress the color coordination between Abyss towels and Habidecor, S.A.'s rugs as a means of increasing sales of Abyss towels.

37. Finally, on November 7, 2002, defendants Celso De Lemos Esteves, Steven Drew and Katie Johnson-Hill caused Habidecor USA, Inc. to apply for a U.S. trademark registration of the famous "HABIDECOR" name, even though this name belongs to

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Habidecor, S.A. and was used by Habidecor, S.A., both in Europe and in the United States for many years prior to the formation of Habidecor USA, Inc. in or about 1995. Upon information and belief, this is the final step in defendants' plan to assume complete control of the "HABIDECOR" trademark in the United States. A true and correct copy of a computer printout reflecting this trademark application is attached hereto as Exhibit F.

C. Plaintiff's Ouster from the Management of Habidecor USA, Inc.

38. At the time plaintiff Carlos Abreu and defendant Celso De Lemos Esteves formed Habidecor USA, Inc. in or about 1995, Mr. Abreu contemplated and plaintiff Abreu and defendant De Lemos Esteves understood that the two shareholders and directors would have an equal say in the management and operation of the business of Habidecor USA, Inc. The parties also understood that Habidecor USA, Inc. would operate as part of a vertically-integrated worldwide enterprise, and that Habidecor USA, Inc. existed primarily to further the sales of Habidecor, S.A.'s bath and accent rugs in the United States.

39. Beginning at or about the same time when defendant Celso De Lemos Esteves consolidated the operations of Abyss European Towels, Inc. in the facilities rented by Habidecor USA, Inc. in Windsor, New Jersey, defendant Celso De Lemos Esteves also began to exclude plaintiff Carlos Abreu from the operation or management of Habidecor USA.

40. Because many of Habidecor USA's employees, particularly defendant Johnson-Hill and Habidecor USA's accountants Lear & Pannepacker, LLP, were loyal to defendant De Lemos Esteves, it became increasingly difficult for plaintiff Abreu to

obtain information necessary for the fulfillment of his responsibilities as a director of Habidecor USA, Inc.

41. On or about October 1, 2002, plaintiff Carlos Abreu's personal financial advisors from the firm of PricewaterhouseCoopers met with defendant Celso De Lemos Esteves and his advisors from the firm of Ernst & Young. The purpose of the meeting was to follow up on a written offer by plaintiff Abreu to buy out defendant Celso De Lemos Esteves' interest in Habidecor, S.A., Habidecor USA, Inc. and the other members of the "Habidecor Group" of companies. Unfortunately, defendant De Lemos Esteves was unwilling to sell his interest at that time.

42. At the October 1, 2002 meeting, plaintiff Abreu's advisors and defendant De Lemos Esteves discussed the opening of the "Abyss & Habidecor at ABC" boutique. At that point, defendant De Lemos Esteves stated that he had not personally read the contract with ABC, and that Steven Drew had dealt with the legal details of the contract. Defendant De Lemos Esteves specifically stated, however, that the contract was not yet binding and that it could be cancelled at any time up until the third week of October.

43. After carefully evaluating the proposed ABC License Agreement, plaintiff Abreu wrote a letter to defendant Katie Johnson-Hill on October 22, 2002, which stated:

Celso has requested my input with regard to the proposed contract with ABC. Having considered the matter, I do not believe that it is in the best interest of Habidecor USA to enter into this contractual commitment at this time. Accordingly, I have advised Celso that we should not proceed with this contract.

44. To his astonishment, plaintiff Abreu received a return facsimile from defendant Johnson-Hill on October 23, 2002 stating that "it is critical that you understand that Habidecor USA, Inc. is contractually committed to the leased space at ABC Carpet

& Home for three years” and that “Failure on Habidecor’s part to follow through with this legal and binding commitment would make us liable for the lease and potential legal damages.” Thus, Habidecor USA, Inc. entered into a significant and unprecedented corporate transaction without the knowledge or consent of one of its two directors, plaintiff Abreu.

45. On October 24, 2002, plaintiff Abreu wrote back and expressed his great surprise that the ABC License Agreement had been entered into without his permission. He also requested financial information relating to Habidecor USA’s potential legal liabilities since “at this stage I am unable to take any business decision given that I have not been presented with any proper business plan.”

46. Defendant Johnson-Hill did not respond to plaintiff Abreu’s request for information for nearly two weeks, requiring plaintiff Abreu to fly back to the United States to personally investigate the situation. On November 2, 2002, plaintiff Abreu visited the ABC department store in New York City, and observed that the “Abyss & Habidecor at ABC” boutique contemplated by the ABC License Agreement was already in operation. Given the amount of time required to outfit and staff such a boutique, it is clear that Habidecor USA was irrevocably committed to the operation of the boutique well before the third week of October. Indeed, Habidecor USA was probably contractually committed even before plaintiff Abreu’s advisors met with defendant De Lemos Esteves on October 1, 2002.

47. On November 6, 2002, defendant Johnson-Hill finally wrote back to plaintiff Abreu and informed him that he was “authorized” to request financial information directly from Habidecor USA’s accountants, Lear & Pannepacker, LLP. (Of

course, as a director of Habidecor USA, plaintiff Abreu was entitled to all relevant financial information and did not require Ms. Johnson-Hill's authorization). In addition, Ms. Johnson-Hill informed plaintiff Abreu that "Mr. De Lemos has instructed me to refer all questions regarding the contract with ABC Carpet & Home to him, as I am not authorized to modify or otherwise negotiate terms of the contract without his approval."

48. On November 13, 2002, plaintiff Carlos Abreu, nonparty Carmen Abreu and their personal accountant from PriceWatershouse Coopers met with Scott Pannepaker of Lear & Pannepacker, LLP to discuss inter alia, an arrangement for the reimbursement of Habidecor USA by Abyss for the use of its office space and shared expenses. No definitive agreement was reached at this time. Plaintiff did, however, learn that several employees who were working solely for defendants Abyss European Towels, Inc. and A&H Bath Boutiques, Inc. were on the payroll of Habidecor USA, Inc., including Michele Teal, Abyss's customer service manager. During this meeting, plaintiff Abreu generally expressed his surprise that Abyss and Habidecor USA, Inc. were sharing facilities, and stated that he thought that it was a conflict of interest for certain employees to be employed by both Abyss and Habidecor USA, Inc., including defendant Johnson-Hill.

49. During the third week of November 2002, plaintiff Abreu decided to exercise his oversight responsibilities as a director of Habidecor USA, Inc. by visiting Habidecor USA's headquarters in Windsor, New Jersey. In anticipation of this visit, plaintiff Abreu invited all of Habidecor USA's independent sales agents to a meeting to be held at the W Hotel in Times Square, New York, New York, on December 3, 2002. The purpose of the scheduled meeting was to discuss Habidecor USA's market strategy

in the United States, the relationship between Habidecor USA, Inc. and Habidecor, S.A. and methods by which Mr. Abreu and Habidecor, S.A. could better serve the United States market. Several of Habidecor USA's sales representatives indicated that they planned to attend the December 3 meeting.

50. On November 29, 2002, defendant Celso De Lemos Esteves, acting in his capacity as President of Habidecor USA, Inc. sent each of the sales representatives a letter informing them that their attendance at the December 3 meeting "is neither required nor necessary," and that "As President of Habidecor USA, Inc., I will ensure that all sales agent issues relating to Habidecor will be promptly relayed to each of you."

51. Plaintiff Carlos Abreu had a dinner meeting with defendant Celso De Lemos Esteves. At the end of the meeting, defendant De Lemos Esteves concluded by telling plaintiff Abreu that he would "see you tomorrow at the meeting" with the independent sales representatives.

52. On December 3, 2002 plaintiff Abreu arrived at the W Hotel in New York City for his meeting with the sales agents. Although the meeting was scheduled for 11:00 a.m. and a buffet for twenty people was prepared, only Mr. Abreu and defendants De Lemos Esteves and Kate Johnson-Hill were in attendance. The independent sales agents, acting on the advice of defendant De Lemos Esteves that their attendance was "neither required nor necessary" – and the implicit threat that they would not receive any additional business from Habidecor USA, Inc. if they chose to attend – elected to boycott the meeting. As a result, Mr. Abreu wasted a trip and the cost of arranging the meeting with the agents.

53. During the last two months, Mr. Abreu and his advisors have sent numerous requests for information to defendant Celso De Lemos Esteves, defendant Katie Johnson-Hill and to Habidecor USA, Inc.'s accountants. Several of these requests have been for routine financial information which ought to have been in Habidecor USA, Inc.'s possession, including routine year-end financial information for 2002. In each instance, these requests have been met with indifferent, desultory responses or disregarded entirely.

54. On January 24, 2003, plaintiff Abreu wrote a letter to defendant De Lemos Esteves in which he stated that "I note that Abyss European Towels, Inc. continues to occupy space at Habidecor USA, Inc." and that "I do not agree with this in either my capacity as a director of Habidecor USA, Inc. or a 50% shareholder of Habidecor USA, Inc." Accordingly, plaintiff Abreu demanded that Abyss vacate the premises it occupied in Habidecor USA's facilities "effective February 28, 2003."

55. Finally, on January 25, 2003, plaintiff Abreu sent a letter to defendant De Lemos Esteves again objecting to the employment of several employees, including defendant Johnson-Hill, by both Abyss and Habidecor USA, Inc. In this letter, plaintiff Abreu stated that "in my capacity as both a director and shareholder of Habidecor USA, Inc. I require that they have no further involvement with Abyss European Towels."

56. Upon information and belief, defendant Abyss European Towels, Inc. continues to occupy space in the facilities operated by Habidecor USA, Inc. in Windsor, New Jersey, and defendant Johnson-Hill and several other employees continue to be on both the payroll of Abyss and the payroll of Habidecor USA, Inc.

57. As is set forth above, plaintiff Carlos Abreu has been completely “frozen out” of the management and operation of Habidecor USA, Inc., despite the fact that he is a director and 50% shareholder of the corporation and the fact that he and defendant De Lemos Esteves both understood that they would be jointly responsible for running the corporation at the time it was formed.

58. Habidecor USA, Inc. has not held a shareholder or director meeting since its inception in 1995. The next scheduled shareholder meeting is required to be held on April 2, 2003. N.J.S.A. § 14A:5-2. On February 24, 2003, plaintiff Carlos Abreu, acting in his capacity as a director and corporate secretary of Habidecor USA, Inc., noticed a shareholder meeting to be held on April 2, 2003, as required by N.J.S.A. § 14A:5-2. In his notice, plaintiff listed sixteen (16) specific items to be discussed at the shareholder meeting.

59. On March 24, 2003, as he was leaving Belgium to travel to the United States to attend the important New York Textile Show in New York City and to attend the previously-notice shareholders’ meeting of Habidecor USA, Inc., plaintiff Carlos Abreu received a competing form of Notice of Shareholders Meeting from defendant Celso de Lemos Esteves. This rival notice unilaterally adjourned the scheduled Shareholders’ Meeting until April 28, 2003. Furthermore, the stated agenda for the meeting includes only two (2) items: (1) “to Elect a Board of Two Directors;” and (2) “to transact such other business as may properly be brought before the shareholders at such meeting or any adjournment thereof.” The omission of the other fourteen (14) items on plaintiff Abreu’s prior notice is indicative of an intention by defendant Celso de Lemos to

foreclose any substantive discussion of Habidecor USA's business at the shareholders' meeting.

60. Because plaintiff Carlos Abreu and defendant Celso de Lemos Esteves are the only two (2) directors of Habidecor USA, Inc., it is anticipated that they will be unable to agree upon a slate of directors for Habidecor USA, Inc. at the shareholders' meeting, whenever it may be held.

61. Plaintiff Abreu should not be required to make a demand upon the board of directors of Habidecor USA, Inc. to take action against defendants Celso De Lemos Esteves, Ginado, S.A., Abyss European Towels, Inc., A&H Bath Boutiques, Inc., Steven Drew, Incorporated, Steve Drew Auerbach a/k/a Steven Drew and Katie Johnson-Hill because plaintiff Abreu is already a member of the board and because demand would be futile insofar as the board is hopelessly deadlocked and the sole remaining director, defendant Celso De Lemos Esteves, is complicit in the wrongdoing alleged herein.

AS AND FOR A FIRST COUNT
FALSE DESIGNATION OF ORIGIN IN VIOLATION OF 15 U.S.C. § 1125(a)

(BY HABIDECOR, S.A. AND CARLOS ABREU DERIVATIVELY UPON BEHALF OF HABIDECOR USA, INC. AGAINST CELSO DE LEMOS ESTEVES, GINADO, S.A., ABYSS EUROPEAN TOWELS, INC., STEVEN DREW, INCORPORATED, A&H BATH BOUTIQUE, INC., KATIE JOHNSON-HILL AND STEVEN DREW AUERBACH A/K/A STEVEN DREW)

62. Plaintiffs repeat and realleges each of the allegations set forth in Paragraphs 1-61 above and incorporate the same by reference as if more fully set forth herein.

63. Defendants Celso de Lemos Esteves, Ginado, S.A., Abyss European Towels, Inc., Steven Drew, Incorporated, A&H Bath Boutique, Inc., Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew have used the "HABIDECOR" name in

commerce to promote the sale of "ABYSS" brand towels by, inter alia, entering into an agreement to operate a "store within a store" under the name of "Abyss & Habidecor at ABC" or "A&H Bath Boutique at ABC Carpet & Home," by forming defendant A&H Bath Boutique, Inc. to jointly promote the sale of Habidecor, S.A.'s rugs and ABYSS brand towels, by prominently displaying the "HABIDECOR" name over a display of ABYSS brand towels, by operating a joint exhibition booth at the New York Home Textiles Show, by including pictures of ABYSS brand towels in Habidecor USA, Inc.'s product catalogues, by falsely stating in the trade press that Habidecor, S.A.'s towels were designed to be color coordinated with Abyss brand towels and by falsely holding Habidecor, S.A. and Abyss European Towels, Inc. out to the public as "sister companies."

64. Such acts constitute a false designation of origin or a false or misleading description of fact, or a false or misleading misrepresentation of fact in violation of 15 U.S.C. § 1125(a).

65. Such acts are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Ginado, S.A., Abyss European Towels, Inc. and/or A&H Bath Boutique, Inc. with Habidecor, S.A. and/or Habidecor USA, Inc., and are likely to create a false impression that ABYSS brand towels originate with or are sponsored or approved by Habidecor, S.A. and/or Habidecor USA, Inc.

66. Such acts were done intentionally and wilfully.

67. Plaintiffs Habidecor, S.A. and Habidecor USA, Inc. have been and will continue to be irreparably harmed by reason of such acts.

WHEREFORE, plaintiffs Habidecor, S.A. and Carlos Abreu, acting derivatively upon behalf of Habidecor USA, Inc., respectfully demand judgment against defendants Celso de Lemos Esteves, Ginado, S.A., Abyss European Towels, Inc., Steven Drew, Incorporated, A&H Bath Boutique, Inc., Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew pursuant to 15 U.S.C. § 1117(a) for permanent injunctive relief enjoining defendants from such conduct and money damages equal to:

- (a) defendants' profits from the sale of ABYSS brand towels;
- (b) plaintiffs' damages in an amount to be determined at trial;
- (c) the cost of this action;
- (d) treble damages;
- (e) reasonable attorneys' fees; and
- (f) such other and further relief as may be just and equitable.

**AS AND FOR A SECOND COUNT
VIOLATION OF N.J.S.A. 56:4-1**

(BY HABIDECOR, S.A. AND CARLOS ABREU DERIVATIVELY UPON BEHALF OF HABIDECOR USA, INC. AGAINST CELSO DE LEMOS ESTEVES, GINADO, S.A., ABYSS EUROPEAN TOWELS, INC., STEVEN DREW, INCORPORATED, A&H BATH BOUTIQUE, INC., KATIE JOHNSON-HILL AND STEVEN DREW AUERBACH A/K/A STEVEN DREW)

68. Plaintiffs repeat and realleges each of the allegations set forth in Paragraphs 1-67 above and incorporate the same by reference as if more fully set forth herein.

69. Defendants Celso de Lemos Esteves, Ginado, S.A., Abyss European Towels, Inc., Steven Drew, Incorporated, A&H Bath Boutique, Inc., Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew have used the "HABIDECOR" name in commerce to promote the sale of "ABYSS" brand towels by, inter alia, entering into an

agreement to operate a "store within a store" under the name of "Abyss & Habidecor at ABC" or "A&H Bath Boutique at ABC Carpet & Home," by forming defendant A&H Bath Boutique, Inc. to jointly promote the sale of Habidecor, S.A.'s rugs and ABYSS brand towels, by prominently displaying the "HABIDECOR" name over a display of ABYSS brand towels, by operating a joint exhibition booth at the New York Home Textiles Show, by including pictures of ABYSS brand towels in Habidecor USA, Inc.'s product catalogues, by falsely stating in the trade press that Habidecor, S.A.'s towels were designed to be color coordinated with Abyss brand towels and by falsely holding Habidecor, S.A. and Abyss European Towels, Inc. out to the public as "sister companies."

70. Such acts constitute the misappropriation by the named defendants of the "HABIDECOR" name, brand and trade-mark, and the reputation and goodwill of Habidecor, S.A. and/or Habidecor USA, Inc. for the benefit of the named defendants.

71. Such acts were done intentionally and wilfully.

72. Plaintiffs Habidecor, S.A. and Habidecor USA, Inc. have been and will continue to be irreparably harmed by reason of such acts.

WHEREFORE, plaintiffs Habidecor, S.A. and Carlos Abreu, acting derivatively upon behalf of Habidecor USA, Inc., respectfully demand judgment against defendants Celso de Lemos Esteves, Ginado, S.A., Abyss European Towels, Inc., Steven Drew, Incorporated, A&H Bath Boutique, Inc., Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew pursuant to N.J.S.A. § 56:4-2 for permanent injunctive relief enjoining defendants from such conduct and:

- (a) Money damages equal to all damages directly or indirectly caused to Habidecor, S.A. and/or Habidecor USA, Inc. by such practices;
- (b) Treble damages in the discretion of the Court; and
- (c) Such other and further relief as may be just and equitable, including without limitation, plaintiffs' reasonable attorneys' fees and costs of suit.

**AS AND FOR A THIRD COUNT
FOR COMMON LAW UNFAIR COMPETITION**

(BY HABIDECOR, S.A. AND CARLOS ABREU DERIVATIVELY UPON BEHALF OF HABIDECOR USA, INC. AGAINST CELSO DE LEMOS ESTEVES, GINADO, S.A., ABYSS EUROPEAN TOWELS, INC., STEVEN DREW, INCORPORATED, A&H BATH BOUTIQUE, INC., KATIE JOHNSON-HILL AND STEVEN DREW AUERBACH A/K/A STEVEN DREW)

73. Plaintiffs repeat and realleges each of the allegations set forth in Paragraphs 1-72 above and incorporates the same by reference as if more fully set forth herein.

74. Defendants Celso de Lemos Esteves, Ginado, S.A., Abyss European Towels, Inc., Steven Drew, Incorporated, A&H Bath Boutique, Inc., Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew have used the "HABIDECOR" name in commerce to promote the sale of "ABYSS" brand towels by, inter alia, entering into an agreement to operate a "store within a store" under the name of "Abyss & Habidecor at ABC" or "A&H Bath Boutique at ABC Carpet & Home," by forming defendant A&H Bath Boutique, Inc. to jointly promote the sale of Habidecor, S.A.'s rugs and ABYSS brand towels, by prominently displaying the "HABIDECOR" name over a display of ABYSS brand towels, by operating a joint exhibition booth at the New York Home Textiles Show, by including pictures of ABYSS brand towels in Habidecor USA, Inc.'s product catalogues, by falsely stating in the trade press that Habidecor, S.A.'s towels

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were designed to be color coordinated with Abyss brand towels and by falsely holding Habidecor, S.A. and Abyss European Towels, Inc. out to the public as "sister companies."

75. Said defendants have also misappropriated the confidential, proprietary and trade secret information of Habidecor, S.A. and/or Habidecor USA, Inc. to their own advantage, including, inter alia, the names and identities of Habidecor USA, Inc.'s independent sales agents and customers, and customer requirements and needs information. Such information was developed by Habidecor, S.A. and/or Habidecor USA, Inc. over many years at considerable expense.

76. Such acts constitute common law unfair competition and the "palming off" of ABYSS brand towels as products manufactured, distributed, sold, sponsored or approved by plaintiffs Habidecor, S.A. and/or Habidecor USA, Inc.

77. Such acts were done intentionally and wilfully and without justification.

78. Plaintiffs Habidecor, S.A. and Habidecor USA, Inc. have been and will continue to be irreparably harmed by reason of such acts.

WHEREFORE, plaintiffs Habidecor, S.A. and Carlos Abreu, acting derivatively upon behalf of Habidecor USA, Inc., respectfully demand judgment against defendants Celso de Lemos Esteves, Ginado, S.A., Abyss European Towels, Inc., Steven Drew, Incorporated, A&H Bath Boutique, Inc., Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew for permanent injunctive relief enjoining defendants from such conduct and for:

- (a) compensatory, consequential and incidental damages in an amount to be determined at trial;

- (b) punitive damages in an amount to be determined at trial; and
- (c) such other and further relief as may be just and equitable, including without limitation, plaintiffs' attorneys' fees and costs of suit.

**AS AND FOR A FOURTH COUNT
FOR CANCELLATION, REVOCATION OR ASSIGNMENT
OF THE "HABIDECOR" TRADEMARK AND FOR
DAMAGES FOR FRAUDULENT REGISTRATION**

(BY HABIDECOR, S.A. AGAINST HABIDECOR USA, INC.)

79. Plaintiff Habidecor, S.A. repeats and realleges each of the allegations set forth in Paragraphs 1-78 above and incorporates the same by reference as if more fully set forth herein.

80. Plaintiff Habidecor, S.A. used the "HABIDECOR" name in international and interstate commerce even prior to the formation of defendant Habidecor USA, Inc. in or about 1995, and the "HABIDECOR" name has become associated in the mind of the consuming public with the unique high-quality luxury bath and accent rugs manufactured, distributed and sold by plaintiff Habidecor, S.A.

81. On or about November 7, 2002, defendant Habidecor USA, Inc. applied to the United States Patent and Trademark Office to register the "HABIDECOR" trademark in International Class 027 and U.S. Classes 019, 020, 037, 042 and 050 for goods and services, including rugs.

82. Upon information and belief, defendant Habidecor USA, Inc. fraudulently represented to the United States Patent and Trademark Office in its application for registration that it was entitled to registration, that it was the first user of the "HABIDECOR" trademark and that no other person was entitled to use the "HABIDECOR" trademark.

83. The registration of the "HABIDECOR" trademark by defendant Habidecor USA, Inc. will cause irreparable harm to plaintiff Habidecor, S.A. because it will cause confusion in the minds of consumers as to the origin of the unique high-quality luxury bath and accent rugs manufactured, distributed and sold by plaintiff Habidecor, S.A., will result in a loss of control of the "HABIDECOR" trademark by Habidecor, S.A., will interfere with the ability of Habidecor, S.A. to license the use of the "HABIDECOR" name and will interfere with the ability of Habidecor, S.A. to appoint a new distributor of its bath and accent rugs in the United States.

WHEREFORE, plaintiff Habidecor, S.A. respectfully requests that this Court:

- (a) enter an Order pursuant to 15 U.S.C. § 1119 permanently enjoining the Director of the United States Patent and Trademark Office from registering the "HABIDECOR" trademark in the name of defendant Habidecor USA, Inc., or in the alternative, ordering the Director of the United States Patent and Trademark Office to cancel, revoke any such registration in favor of defendant Habidecor USA, Inc. and to register the "HABIDECOR" trademark in the name of plaintiff Habidecor, S.A.;
- (b) award plaintiff Habidecor, S.A. money damages equal to any damages sustained as a result of defendant Habidecor USA, Inc.'s fraudulent registration of the "HABIDECOR" trademark in its own name; and
- (c) grant plaintiff Habidecor, S.A., such other and further relief as may be just and equitable, including its reasonable attorneys' fees and costs of suit.

**AS AND FOR A FIFTH COUNT
FOR BREACH OF FIDUCIARY DUTY**

(BY CARLOS ABREU DERIVATIVELY UPON BEHALF OF
HABIDECOR USA, INC. AGAINST CELSO DE LEMOS ESTEVES,
KATIE JOHNSON-HILL AND STEVEN DREW AUERBACH A/K/A
STEVEN DREW)

84. Plaintiff repeat and realleges each of the allegations set forth in Paragraphs 1-83 above and incorporates the same by reference as if more fully set forth herein.

85. Defendants Celso de Lemos Esteves, Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew owed certain fiduciary duties of trust, good faith, fair dealing and loyalty to Habidecor USA, Inc. in their respective positions as officers, directors and/or highly-compensated employees of Habidecor USA, Inc.

86. Said defendants breached their fiduciary duties to Habidecor USA, Inc. by, inter alia, using the "HABIDECOR" name to promote the sale of "ABYSS" brand towels, by hiring Mia Deknudt and Axel Hugeot to give "ABYSS" brand towels a "look and feel" similar to Habidecor, S.A.'s bath and accessory rugs, by permitting Abyss European Towels, Inc. to occupy Habidecor USA, Inc.'s premises, by allowing Habidecor USA, Inc.'s employees to perform services for Abyss European Towels, Inc. under a "common paymaster" arrangement without adequate reimbursement to Habidecor USA, Inc., by co-opting Habidecor USA, Inc.'s entire independent sales force for the benefit of Abyss European Towels, Inc., by diverting corporate opportunities and assets of Habidecor USA, Inc. to Abyss European Towels, Inc. and by causing Habidecor USA, Inc. to enter into a long-term joint licensing agreement with ABC Home Furnishings, Inc. without the knowledge or consent of plaintiff Carlos Abreu, who is one of the two directors of Habidecor USA, Inc.

87. Habidecor USA, Inc. has been and will continue to be irreparably harmed by reason of such acts.

WHEREFORE, plaintiff Carlos Abreu, acting derivatively upon behalf of Habidecor USA, Inc., respectfully demands judgment against defendants Celso de Lemos Esteves, Katie Johnson-Hill and Steven Drew Auerbach a/k/a Steven Drew for injunctive relief permanently removing defendants Celso de Lemos Esteves, Katie Hill-Johnson and Steven Drew Auerbach a/k/a Steven Drew from their positions as directors, officers and/or highly compensated employees of Habidecor USA, Inc. for cause, and for:

- (a) compensatory, consequential and incidental damages in an amount to be determined at trial;
- (b) punitive damages in an amount to be determined at trial; and
- (c) such other and further relief as may be just and equitable, including without limitation, plaintiffs' attorneys' fees and costs of suit.

**AS AND FOR A SIXTH COUNT
FOR BREACH OF CONTRACT**

(BY CARLOS ABREU DERIVATIVELY UPON BEHALF OF
HABIDECOR USA, INC. AGAINST KATIE JOHNSON-HILL,
STEVEN DREW, INCORPORATED AND STEVEN DREW
AUERBACH A/K/A STEVEN DREW)

88. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1-83 above and incorporates the same by reference as if more fully set forth herein.

89. Defendant Katie Johnson-Hill, Steven Drew, Incorporated and Steven Drew Auerbach a/k/a Steven Drew each have employment contracts with Habidecor USA, Inc.

90. These contracts require, either expressly or impliedly, that said defendants devote substantially all of their time and effort to the business of Habidecor USA, Inc.

91. Said defendants breached their contracts with Habidecor USA, Inc. by undertaking employment with defendants Ginado, S.A., A&H Bath Boutiques, Inc. and/or Abyss European Towels, Inc. while still employed by Habidecor USA, Inc.

92. Habidecor USA, Inc. has been directly and foreseeably injured by such breaches of contract.

WHEREFORE, plaintiff Carlos Abreu, acting derivatively upon behalf of Habidecor USA, Inc., respectfully demands judgment against defendants Katie Johnson-Hill, Steven Drew, Incorporated and Steven Drew Auerbach a/k/a Steven Drew for injunctive relief requiring the disgorgement of any compensation received under their contracts with Habidecor USA, Inc., and for:

- (a) compensatory, consequential and incidental damages in an amount to be determined at trial; and
- (b) such other and further relief as may be just and equitable, including without limitation, plaintiffs' attorneys' fees and costs of suit.

**AS AND FOR A SEVENTH COUNT
FOR SHAREHOLDER AND DIRECTOR DEADLOCK AND
MINORITY SHAREHOLDER OPPRESSION UNDER N.J.S.A § 14A:12-7**

(BY CARLOS ABREU INDIVIDUALLY AGAINST CELSO DE LEMOS ESTEVES)

93. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 1-92 above and incorporates the same by reference as if more fully set forth herein.

94. Plaintiff Carlos Abreu and defendant Celso de Lemos Esteves are the only two shareholders and directors of Habidecor USA, Inc.

95. The shareholders of Habidecor USA, Inc. are so divided in voting power that, for a period of time which includes the time when two consecutive annual meetings were or should have been held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

96. The directors of Habidecor USA, Inc. are unable to effect action on one or more substantial matters respecting the corporation's affairs.

97. Defendant Celso de Lemos Esteves has ousted plaintiff Carlos Abreu from any meaningful participation in the management of Habidecor USA, Inc.'s business, has acted fraudulently and illegally, mismanaged the corporation, abused his power as an officer and director of Habidecor USA, Inc., and has acted oppressively and unfairly toward plaintiff Carlos Abreu in his capacity as a shareholder, director and officer of Habidecor USA, Inc.

98. Upon information and belief, the relationship between plaintiff Carlos Abreu and defendant Celso de Lemos Esteves has deteriorated to the point where it is no longer possible for them to work together, to the detriment of Habidecor, S.A. and Habidecor USA, Inc.

WHEREFORE, plaintiff Carlos Abreu respectfully requests that this Court enter an Order:

- (a) Requiring defendant Celso de Lemos Esteves to sell all of his shares in Habidecor USA, Inc. to plaintiff Carlos Abreu pursuant to N.J.S.A. § 14A:12-7(c)(8);

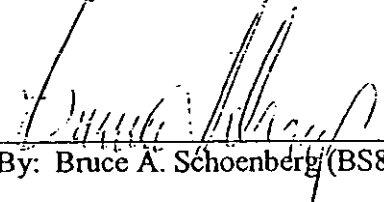
- (b) Permanently removing defendant Celso de Lemos Esteves from his position as a director and officer of Habidecor USA, Inc.; and
- (c) Granting plaintiff Carlos Abreu such other and further relief as may be just and equitable under the circumstances, including without limitation his reasonable attorneys' fees and costs of suit.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: March 26, 2003

Schrader & Schoenberg, LLP
76 South Orange Avenue, Suite 305
South Orange, New Jersey 07079
(973) 313-0600
Attorneys for Plaintiffs


By: Bruce A. Schoenberg (BS8028)

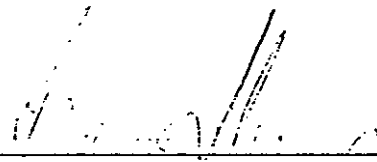
Louis F. Burke, Esq.
Louis F. Burke, P.C.
360 Lexington Avenue, 14th Floor
New York, New York 10017
Of Counsel

LOCAL RULE 11.2 CERTIFICATION

BRUCE A. SCHOENBERG CERTIFIES:

1. I am an attorney admitted to the practice of law in the State of New Jersey and a member of the bar of this Court. I am a partner in Schrader & Schoenberg, LLP, counsel for plaintiffs in this matter.
2. To my knowledge, the matter in controversy in this action is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 26, 2003.



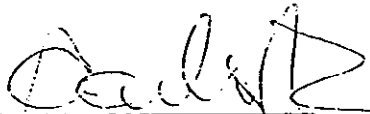
Bruce A. Schoenberg (BS8028)

VERIFICATION

CARLOS ABREU DECLARES:

1. I am a plaintiff in this action. I bring this action on my own behalf and derivatively upon behalf of Habidecor USA, Inc. I also bring this action in my capacity as the President of plaintiff Habidecor, S.A. I make this certification upon my own personal knowledge.
2. I have reviewed the attached Verified Complaint and the factual allegations contained therein are true, except as to matters which are stated to be alleged upon information and belief, which I believe to be true based upon my review of the books and records of Habidecor USA, Inc. and Habidecor, S.A. or my review of information which has been provided to me by the officers, agents and accountants of Habidecor USA, Inc. and Habidecor, S.A. or my review of publicly available information.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 26, 2003.



Carlos Abreu

List of Exhibits to Complaint

<u>Exhibit</u>	<u>Description</u>
A	List of Habidecor, S.A. trademark registrations
B	Excerpt from the LDB Interior Textiles 1992 Annual Directory featuring Habidecor, S.A.'s products
C	ABC License Agreement
D	Photograph of the "Abyss and Habidecor" "store within a store" at ABC Home Furnishings, Inc.
E	Home Textiles Today article dated October 7, 2000
F	Habidecor USA, Inc. trademark application for "HABIDECOR" name dated November 7, 2002

10/17/1983

10/11/2003 11/01

LDB

INTERIOR TEXTILES

1992 ANNUAL DIRECTORY

THE BUYING REFERENCE FOR THE HOME FASHIONS INDUSTRY



**Grainware Bath Accessories
By Wilardy**

2600 North Pulaski Road
Chicago, IL 60639
312-489-2600
800-327-9627
FAX: 312-227-5511
Contact: Martin I. Sherr, nat'l s/s mgr
Nat'l Showroom: 225 Fifth
Avenue, Suite 901, New York, NY
10010, 212-889-0311
Manufactures: Bath Accessories,
Decorative Accessories.

Grandover Enterprises

358 Fifth Avenue
New York, NY 10001
212-563-2054
800-223-2042
FAX: 212-564-3185
TELEX: 710-581-2802
Contact: Glenn Bradie, inst s/s mgr
Manufactures: Robes and Wraps.

Edward Greeman & Co. Inc.

295 Fifth Avenue, Suite 802
New York, NY 10016
212-689-7950
800-843-6554
FAX: 212-696-0271
Contact: Alan Bickler, pres
Manufactures: Bath Rugs, Shower
Curtains, Toilet Seats, Sheets, Decorative
Accessories, Decorative Pillows, Wall
Art, Home Fragrances, Kitchen Textiles,
Napkin Rings, Napkins, Placemats,
Runners, Scarves, Doilies, Tablecloths,
Ready-Made Curtains & Drapery.

Greenhorn Trading Co.

17 Columbia Street
Hartford, CT 06106
203-524-8499
FAX: 203-249-1577
Contact: Noreen H. Greene, pres
Nat'l Showroom: Atlanta Gift Mart,
230 Spring Street, Atlanta, GA
30303
Manufactures: Bath Towels, Robes and
Wraps, Personal Care Products,
Comforter/Duvet Covers, Infant/Juvenile
Bedding, Pillowcases, Sheets, Napkins,
Placemats, Tablecloths.

Grossman & Weissman Inc.

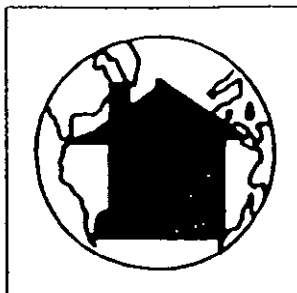
295 Fifth Avenue, Suite 1614
New York, NY 10016
212-685-2026
800-523-8885
FAX: 212-689-7270
TELEX: 661-771 UW
Contact: Scott Forster, vp
Manufactures: Napkins, Placemats,
Runners, Scarves, Doilies, Tablecloths.

GUSA (Ginger)

250-S Executive Drive
Edgewood, NY 11717
800-842-4872
FAX: 516-254-0404
TELEX: 265228 GUSA UR
Contact: Suzanne Desmond,
cust serv
Manufactures: Bath Accessories.

H.B.D. Inc.

3901 Riverdale Road
Greensboro, NC 27406
919-275-4800
800-334-8404
FAX: 919-275-7242
Contact: Debby Feuer, div mktg
mgr; Leslie Rorer, cust serv rep
Manufactures: Bath Accessories,
Shower Curtains, Closet/Storage
Accessories, Laundry Bags, Toy Bags.

**Habidecor, S.A.**

Zona Industrial De Mundao
Viseu
3500, Portugal
032-921234
FAX: 032-921396
TELEX: 53407 Habcor P
Contact: Carlos Abreu, mgr
Manufactures: Bath Rugs.

See Ad on Page 43

Hamburg House Inc.

6157 NW 167 Street, Suite F20
Miami, FL 33015
305-557-9913
FAX: 305-824-0623
Contact: Peter Auerbach, pres
Manufactures: Bath Rugs, Bath Towels,
Beach Towels, Shower Curtains,
Bedspreads, Comforter/Duvet Covers,
Pillowcases, Sheets, Napkins, Placemats,
Runners, Scarves, Doilies, Tablecloths.

Hammer-Pac Inc.

350 Fifth Avenue, Suite 1219
New York, NY 10018
212-244-6331
FAX: 212-244-6342
Manufactures: Closet/Storage
Accessories, Decorative Accessories.

Hands All Around

986 Lexington Avenue
New York, NY 10021
212-744-5070
Contact: Addie Havemeyer, pres
Manufactures: Bed Accessories,
Infant/Juvenile Bedding, Quilts, Throws,
Decorative Pillows, Napkins, Placemats,
Runners, Scarves, Doilies, Tablecloths.

Lilly Designs for Hangables

6202 Madison Court
Morton Grove, IL 60053
708-965-1230
Contact: Bobbie Dubin, pres
Manufactures: Bath Accessories,
Decorative Accessories.

Harlem Textile Works

62 Hamilton Terrace
New York, NY 10031
212-534-3377
Contact: Keris Wolsky, dir
Manufactures: Shower Curtains, Bed
Accessories, Quilts, Decorative Pillows,
Napkins, Placemats.

Harper-Lee International Inc.

PO Box 279
Roan Mountain, TN 37687
615-772-3233
Manufactures: Bath Accessories,
Decorative Accessories.

Hart & Haller

PO Box 57
New Hartford, NY 13413
315-735-9770
Contact: Katherine Griffune, vp
Manufactures: Bath Accessories,
Decorative Accessories, Decorative
Pillows.

Health O Meter Inc.

7400 West 100 Place
Bridgeview, IL 60455
708-598-9100
800-323-8363
FAX: 708-599-0150
Contact: Michael W. Brezette,
vp mktg
Manufactures: Scales.

Heart & Hand

21800 Towncenter Plaza #144
Sterling, VA 22170
703-430-4200
FAX: 703-450-5574
Contact: Alan Witham, op mgr
Manufactures: Decorative Accessories.

Hearts Content

PO Box 200
Mountaintop, PA 18707
717-868-6666
800-321-7073
FAX: 717-868-5114
Contact: Debbie Robinson, ownr
Manufactures: Decorative Accessories,
Home Fragrances.

Hecking U.S.A., Inc.

P.O. Box 127
Comelia, GA 30531
404-778-1140
FAX: 404-778-8780
Contact: Klaus Hecking, pres
Manufactures: Bed Accessories, Bed
Pillows, Comforter/Duvet Covers,
Natural-Filled Comforters, Pillowcases,
Sheets.

Hedaya Bros.

295 Fifth Avenue, Suite 406
New York, NY 10016
212-889-1111
800-223-1454
FAX: 212-889-1115
Contact: Stan Goldman, vp
Manufactures: Bath Towels, Kitchen
Textiles.

Heritage Linens Ltd.

122 South Main Street
Gloversville, NY 12078
518-725-2271
FAX: 518-773-3916
Contact: Gael Coakley, pres
Manufactures: Napkins, Placemats,
Tablecloths, Runners.

**The Hewitt Soap Company
Inc.**

333 Linden Avenue
Dayton, OH 45403
513-253-1151
800-543-2245
FAX: 513-253-3123
Contact: Gary R. Moorehead,
vp s/s
Manufactures: Personal Care Products.

**Hollander Home Fashions
Corp.**

6560 West Rogers Circle
Boca Raton, FL 33487
407-997-6900
800-BEDROOM
FAX: 407-997-8738
Contact: Alan Gross, vp s/s
Nat'l Showroom: 295 Fifth
Avenue, New York, NY 10016,
212-689-2840
Manufactures: Bed Accessories, Bed
Pillows, Comforter/Duvet Covers,
Natural-Filled Comforters, Synthetic-
Filled Comforters, Infant/Juvenile
Bedding, Mattress Pads, Pillowcases,
Sheets, Decorative Pillows, Ready-Made
Curtains & Drapery, Top Treatments.

**Home Innovations Inc.
(Home Curtain Corp. and
Home Innovations Bed
Fashions)**

295 Fifth Avenue, Suite 14
New York, NY 10016
212-686-2080
FAX: 212-779-0149
Contact: Lee Moyer, pres
Manufactures: Bed Accessories, Bed
Pillows, Bedspreads, Mattress Pads,
Sheets, Synthetic-Filled Comforters,
Ready-Made Curtains & Drapery, Top
Treatments.

Home Treasures Inc.

5150 Ashley Court
Houston, TX 77041
713-937-7716
FAX: 713-937-7739
Contact: Saeed Taghdisi,
mktg/s/s mgr
Nat'l Showroom: Zisk
Corporation, World Trade Center,
8 Floor, Dallas, TX
Manufactures: Bed Accessories, Bed-
spreads, Blankets, Comforter/Duvet
Covers, Synthetic-Filled Comforters,
Coverlets, Infant/Juvenile Bedding,
Pillowcases, Quilts, Sheets, Throws.

Home-Tex Fashions Inc.

9415 Science Center Drive
Minneapolis, MN 55428
612-537-5454
800-328-2437
FAX: 612-537-1103
Contact: Albert Zubert, gen mgr
Manufactures: Made-To-Measure
Curtains & Drapery, Ready-Made
Curtains & Drapery, Top Treatments,
Custom Vertical Blinds.

Homemaker Industries

295 Fifth Avenue
New York, NY 10016
212-689-8161
800-672-8888
FAX: 212-213-6829
Contact: Jeffrey Cohen, vp s/s
Manufactures: Bath Rugs, Shower
Curtains, Floor Coverings.

**Homescapes
(Div. of Sure Fit Products)**

1071 Avenue of the Americas,
6th Floor
New York, NY 10018
212-869-6633
FAX: 212-869-6644
Contact: Gretchen Dale, exec vp
Manufactures: Bed Accessories, Bed-
spreads, Comforter/Duvet Covers, Syn-
thetic-Filled Comforters, Coverlets, Pil-
lowcases, Sheets, Throws, Decorative
Accessories, Decorative Pillows, Ready-
Made Curtains & Drapery, Specialty
Treatments, Top Treatments, Furniture
Covers, Decorative Throw Pillows.

**Homespun 10-Fl. Wide
Fabrics & Draperies**

PO Box 3223-LDB
Ventura, CA 93006
805-642-8111
FAX: 805-642-0759
Contact: DeAnna Decker, mgr
Manufactures: Bed Accessories, Bed-
spreads, Comforter/Duvet Covers, Nat-
ural-Filled Comforters, Synthetic-Filled
Comforters, Coverlets, Throws, Napkins,
Placemats, Tablecloths, Wallcoverings,
Custom Curtains & Drapery, Made-To-
Measure Curtains & Drapery, Specialty
Treatments, Top Treatments.

Homework

261 Fifth Avenue, Suite 509
New York, NY 10016
212-545-1112
FAX: 212-545-1520
Contact: Y.J. Hsiung, oeo



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Zona Industrial de Mundao P-3500 VISEU (PORTUGAL) - 11, rue des Wattines B-7812 LIGNE (BELGIQUE)

Phone : 351.32.921234/5/6 - Fax : 351.32.921396

TRADE OFFICE E.E.C.: HABIDECOR - VITEX

Phone : 32.68.280572 - Fax : 32.68.287019

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LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the ___ day of August, 2002 between ABC HOME FURNISHINGS, INC., a New York corporation having its principal office at 888 Broadway, New York, New York 10003 ("LICENSOR"), and ABYSS-EUROPEAN TOWELS, INC. and HABIDECOR U.S.A., INC. having its principal office at Windsor Industrial Park, 92 North Main Street, Building 3C, Windsor, NJ 08561 (collectively the "LICENSEE"). Sometimes LICENSOR and LICENSEE are referred to in this Agreement individually as a "party" and collectively as the "parties."

The parties agree to the following:

A. LICENSOR operates a store more commonly known as ABC HOME FURNISHINGS, INC. (the "Store") on premises referred to as 888 Broadway, New York, New York (the "Building") and which is more commonly referred to as "ABC Carpet & Home."

B. LICENSEE desires the privilege and a license to operate a towel department within the Store under the terms, covenants, and conditions set forth in this Agreement (the "Department").

C. LICENSOR is willing to grant LICENSEE such privilege and license but only upon the terms, covenants, and conditions set forth in this Agreement.

D. This Agreement supersedes and replaces any previous license agreement between the parties for the Licensed Space (defined herein).

In consideration of the mutual promises contained in this Agreement, LICENSOR and LICENSEE agree as follows:

1. **Grant of License.** LICENSOR hereby grants to LICENSEE and LICENSEE accepts the privilege to conduct and operate the Department in the Licensed Space for the display and retail sale of towels, bath and accent rugs, bathrobes and loungewear in any construction and with any fiber content. In no event may LICENSEE sell carpets or any other items without the prior written consent of LICENSOR, which consent may be withheld at the sole discretion of LICENSOR for any reason whatsoever. It is anticipated that the name of the Department will be "Abyss & Habidecor at ABC" or a name substantially similar thereto.

(a) In no event may LICENSEE sell any other items in the Department without the prior written consent of LICENSOR, which consent may be withheld at the sole discretion of LICENSOR for any reason whatsoever. LICENSEE accepts this Agreement subject and subordinate to any underlying lease, mortgage, deed of trust, or other lien or encumbrance presently existing on the Store or hereafter placed upon the Store.

(b) LICENSOR agrees that so long as this Agreement remains in effect, LICENSOR will not sell products of a same and/or similar design and/or construction and/or selling prices as sold by LICENSEE in the Department. This is not intended to prevent LICENSOR from licensing other vendors who sell same and/or similar merchandise and will not be so interpreted.

2. Licensed Space

(a) LICENSEE will occupy an area on the third floor of the Store consisting of approximately 550 square feet of useable space, inclusive of selling and display space (the "Licensed Space"). The Licensed Space will be located in an area of the Store that is described as the space currently occupied by the Bath Shop and as more particularly described on the annexed diagram attached as Exhibit A, which is incorporated into this Agreement for all purposes.

(b) The license of the Licensed Space includes all appurtenances and existing means of access to and from, and all ways over the adjoining and surrounding area of the Store and other public spaces immediately adjoining and contiguous to the Licensed Space, and rights appurtenant to or used in connection with the Licensed Space, including the use of all common areas, so long as such use is consistent with LICENSEE's use of the Licensed Space in accordance with the terms of this Agreement.

(c) Moreover, LICENSEE shall not: (a) keep, use, or permit to be kept or used on the Licensed Space any explosives or inflammable fluids that are not consistent with the permitted use allowed in this Agreement without LICENSOR's prior written approval; (b) use the Licensed Space for any purpose whatsoever that is a nuisance or annoyance to LICENSOR or another licensee or tenant in space that adjoins the Licensed Space or that might, in the exclusive judgment of LICENSOR, appreciably damage LICENSOR's goodwill or reputation or tend to injure or reduce the value of the Licensed Space; (c) deface or injure any improvements located on the Licensed Space; (d) overload the floors; (e) commit or suffer any waste on the Licensed Space except as necessary for the demolition or construction or any improvements that are approved in advance by LICENSOR in writing; or (f) keep anything within the improvements on the Licensed Space or use the Licensed Space for any purposes that increases the insurance premium costs or invalidates any insurance policy carried on the Licensed Space by either LICENSOR or LICENSEE.

(d) LICENSEE agrees to pay for the cost of installing the shop in the Department, including the cost of installing all furniture and fixtures as well as the cost of the build-out. LICENSEE agrees to use contractors for this work that are reasonably acceptable to LICENSOR and which maintain insurance coverages comparable to that required of LICENSEE hereunder, which agree to sign lien waivers prior to the commencement of any work as to LICENSOR's property and interests, and which agree to list as additional insureds the same parties that LICENSEE is required to name herein.

(e) The area set aside as the Licensed Space to be provided by LICENSOR hereunder will be free of any pre-existing selling fixtures and in broom clean condition prior to the commencement date of this Agreement and will be so at LICENSOR's sole cost and expense. LICENSEE will complete its work on the installation of its space no longer than thirty days after receipt from LICENSOR of notice that LICENSOR has approved LICENSEE's plans and design for the Licensed Space.

3. **Term.** The term of this Agreement (the "Term") will commence on September 15, 2002 (the "Commencement Date") and will continue until January 1, 2005. Thereafter, this Agreement will continue in full force and effect under the same terms and conditions until terminated by either party upon not less than ninety days' notice to the other party.

4. **Collection of Gross Sales.** LICENSOR will collect one hundred percent (100%) of the gross sales derived from the Licensed Space and will timely pay out of such gross sales (i) all applicable sales and excise taxes, (ii) all credit card and charge card charges, (iii) all check approval verifications costs, (iv) all shipping and handling charges, (v) all costs related customers' returns and refunds, and (vi) the amount of License Fees payable by LICENSEE to LICENSOR hereunder, with the balance remitted to LICENSEE as provided for herein. The term "gross sales," as used in this Agreement, means the total amount in dollars derived from all paid-in-full (i.e., finalized and delivered) sales of merchandise and services originating from the Licensed Space, regardless of whether the customer's order is filled by shipment or delivery from or at the Licensed Space or delivered from any other place. In determining whether a sale has been finalized and License Fees are payable in accordance with the provisions of this Agreement, no deduction will be made for any part or parts (or the whole) of the sales that are uncollected or uncollectible. The term "net sales" as used in this Agreement means gross sales less the items described in items (i) through (v) above.

(a) **Sales and Excise Taxes.** LICENSOR will have the right to deduct from gross sales any amounts collected and paid out for any sales taxes or excise taxes imposed by any duly constituted government authority. LICENSOR agrees to promptly pay all applicable sales taxes and excise taxes that are deducted as and when due.

(b) **Credit Card Charges.** LICENSOR agrees to accept credit card sales (and agrees to accept all major credit cards such as AMEX, VISA, and MasterCard) and LICENSOR may deduct from gross sales two percent (2%) of all sales from the Licensed Space to cover the cost of credit card charges, check verification charges, return check charges, and similar expenses.

(c) **Shipping and Handling Charges, Returns, and Refunds.** LICENSOR may also deduct from gross sales all shipping and handling charges to customers and the cost of customers' returns and refunds. LICENSOR may make all

refunds thereof either in cash, by check, or credit slips through LICENSOR's cash register and LICENSOR will maintain appropriate records of such transactions.

(d) **Definitions.** For the purposes of this Agreement (regardless whether such terms are capitalized):

(1) "Annual Period" means any full twelve Fiscal Month period during the Term that commences on the first day of the Fiscal Month in which the Commencement Date occurs or any anniversary date thereof.

(2) "Fiscal Month" means the monthly period that LICENSOR uses in accounting for its business operations, consisting normally of two 4-week periods and one 5-week period during each fiscal quarter.

(3) "License Fees" means for each Fiscal Month during the Term of this Agreement an amount equal to thirty percent (30%) of LICENSEE's net sales for such Fiscal Month from the Store except that for the two Fiscal Months during each Annual Period that approximately correspond to calendar months January and July of each Annual Period, the applicable percentage will be twenty percent (20%).

(e) **Payments.** Within fifteen days following each Fiscal Month during each Annual Period, LICENSOR shall deduct from net sales an amount equal to the License Fees due for such Fiscal Month and promptly remit the balance to LICENSEE.

(f) **Reporting.** Each Fiscal Month LICENSOR will cause to be generated a business report in a form reasonably acceptable to LICENSEE relating to the sales from the Licensed Space. The report will accompany the License Fees provided for in Section 4(d). The report will itemize the amount of paid-in-full (i.e., finalized and delivered) gross sales, permitted deductions pursuant to this Section 4, and net sales during the Fiscal Month on which License Fees are being paid, and will provide such additional information as LICENSEE may reasonably request and the parties may agree upon. Each report will be certified as true by a duly authorized agent or officer of LICENSOR.

5. Maintenance of Sales Records.

(a) LICENSOR will provide, and at all times use and keep in good operating order and condition, such systems of recording sales as LICENSEE, from time to time, reasonably designates that will record sales on numbered and daily dated invoices. LICENSOR agrees to preserve said daily dated invoices for not less than one year after the end of the fiscal year of LICENSOR to which they relate. LICENSOR further agrees that a duplicate copy of the numbered invoice describing the items purchased and showing the amount of the sale will be delivered to each customer for and at the time of each sale. LICENSOR will record or cause to be recorded on LICENSOR's registers all sales made by or in the Department or originating therefrom

or attributable thereto, regardless of whether for cash or other valuable consideration by means of invoices as aforesaid, at the time of the sale.

(b) LICENSOR further covenants and agrees to record sales and other transactions from LICENSOR's sales from the Licensed Space in books of account, in accordance with good accounting methods and practices. All invoice records and book records must be maintained at the Store and LICENSEE will have the right to audit, examine, copy, and make abstracts of the same at any time upon reasonable prior notice by LICENSEE to LICENSOR. If a discrepancy of more than two percent (2%) in underreporting of sales is determined as a result of such audit or examination, LICENSOR will not only pay LICENSEE the amount of the shortfall, plus interest at the rate of seven percent (7%) per annum from the date the original amounts were due and payable, but will also reimburse LICENSEE for the reasonable cost of the audit or examination.

6. Operation of Licensed Space.

(a) LICENSEE shall keep the Department open for the regular transaction of business, with adequate inventory in stock. Moreover, LICENSEE agrees to have a representative of LICENSEE's company working in the Department at least twenty hours a week and will also have an account manager visit the Licensed Space at least two times each week to determine adequate inventory levels and work on the floor sets.

(b) LICENSOR will at its own cost and expense receive at the Store though its shipping and receiving dock merchandise addressed to or directed to LICENSEE and deliver said merchandise to the Licensed Space. Prior to LICENSEE's acceptance of each delivery, LICENSOR will make available the documents evidencing the receipt of the merchandise at LICENSOR's receiving department. LICENSEE agrees that LICENSOR will have no responsibility for or obligation with respect to verifying the condition of the shipments, determining if any item is broken or damaged, or inventorying the shipments other than to confirm that the number of boxes shipped, as reflected on the shipping manifest, equal the number of boxes received.

7. LICENSEE's Operational Expenses. Except as otherwise specifically provided for in this Agreement, LICENSEE will bear and promptly pay and discharge all expenses and obligations in connection with the operation of its business, including, but not limited to, (i) the purchase of all fixtures, merchandise, materials, and supplies in the Licensed Space, (ii) the compensation of its employees plus benefits, taxes, licenses, and permit fees payable to public authorities, (iii) commission expenses paid to LICENSOR's employees that are generated from the sale of LICENSEE's goods and inventory (which commissions will not exceed 6% of net sales), (iv) all other expenses regardless whether similar to the foregoing that are incurred by either party in connection with the operation of the Department, and (v) all shipping and handling charges other than in connection with customer returns. LICENSEE is likewise entitled to be paid commissions on sales of LICENSOR's goods and inventory by LICENSEE's employees (which commissions will not exceed 6% of net sales) and

LICENSOR agrees to credit LICENSEE for such amounts against the commission expenses that are payable to LICENSOR for sales of LICENSEE's goods and inventory by LICENSOR's employees. With regard to LICENSOR's personal shoppers, LICENSOR agrees to use commercially reasonable efforts to encourage such personal shoppers to promote the sale of LICENSEE's merchandise. LICENSEE agrees to have a selling manager employed in the Licensed Space, a minimum of forty hours per week. In addition, one of LICENSEE's management personnel will visit and inspect LICENSEE's operation at least twice a week. Upon receipt of adequate prior notice from LICENSEE, LICENSOR agrees to provide sales personnel to attend to the Licensed Space at those times at which LICENSEE employees are not present.

8. **LICENSEE's Employees.** With regard to all LICENSEE's sales in the Licensed Space, LICENSEE agrees to be solely responsible for providing adequate accounting, record keeping, selling, and shipping personnel for LICENSEE's operations in the Licensed Space. LICENSEE agrees to have each of its employees who works in the Licensed Space sign an acknowledgement form at the time of hire stating that the employee is aware of the fact that he or she is an employee of LICENSEE and not of LICENSOR. LICENSEE agrees to allow LICENSOR to review such acknowledgement forms at any time during the Term or within five years after the end of the Term and LICENSEE agrees to keep the originals of such acknowledgement forms for a period of at least five years after the end of the Term. LICENSEE agrees to assume all responsibility and liability for all persons it employs to work in the Licensed Space. Nothing contained in this Agreement will be deemed, either directly or indirectly, to construe LICENSOR as the master or employer of any of LICENSEE's managers or employees, agents or servants and in the event of a dispute regarding the construction of this Agreement, it will be interpreted in a manner consistent therewith.

9. **Keys; Access.** LICENSEE will not be entitled to any keys or other means of access to the Building. If the Licensed Space is separately enclosed, LICENSEE will be entitled to have keys to the Licensed Space but only on the condition that LICENSEE furnishes LICENSOR with at least one key to the Licensed Space. In the event of an emergency, either a senior manager or a general manager of LICENSOR will have the right to enter the Licensed Space without LICENSEE's consent and without prior notice. In all other instances, LICENSOR agrees to provide LICENSEE with prior notice of the need to access the Licensed Space.

10. **Merchandising, Pricing, and Other Policies.** All merchandising policies, including, but not limited to pricing structure, grades, standards, and qualities of merchandise and inventory of LICENSEE are subject to the approval of LICENSOR, which approval will not be unreasonably withheld. It is agreed that the pricing structure of such merchandise to be sold in the Licensed Space and the presentation and mix of merchandise will be at a level that is reasonably acceptable to LICENSOR. LICENSEE will not be permitted to sell any items in the Licensed Space other than those items permitted under Section 1 without the prior written consent of LICENSOR. Additionally, LICENSEE shall conform to all the general business policies, practices, and procedures of LICENSOR, as same may from time to time during the Term be amended or modified by LICENSOR.

11. Advertising. All advertising by LICENSEE pertaining to its business in the Licensed Space in any form whatsoever during the Term must be consistent with prior practices within the Store and will be subject to the approval and discretion of LICENSOR, and LICENSEE agrees not to engage in any advertising without LICENSOR's written consent. To the extent that LICENSOR incurs any cooperative advertising and direct mail expenses for the benefit of the Store and all the other licensees in the Store, LICENSEE agrees that LICENSOR will bill LICENSEE for its share of such advertising expenses and direct mail expenses provided that said advertisement or direct mail piece has had the prior written approval of LICENSEE. LICENSEE agrees to pay any such amounts owed within fifteen days of the date of receipt of an invoice. LICENSOR agrees that LICENSEE will have the right during the term of this Agreement to use the phrase "Abyss and Habidecor at ABC" in LICENSEE's advertising. Moreover, to the extent that such action does not present a problem with LICENSOR's other licensees, LICENSOR agrees to use commercially reasonable efforts to list LICENSEE's name among LICENSOR's store names. LICENSEE is required to spend at least two percent (2%) of its gross sales from the Licensed Space on advertising and promotional events, which amount can be spent in combination with LICENSOR's cooperative advertising. LICENSEE agrees that LICENSOR will have the right to audit LICENSEE's books and records to verify compliance with this provision.

12. Customer Complaints. LICENSEE covenants and agrees to promptly and satisfactorily resolve any customer complaints relative to business transactions conducted during the day-to-day operations of LICENSEE's business in the Licensed Space within seven days of LICENSEE receipt of same. Satisfactory resolution of complaints and customer allowances will be determined within the reasonable discretion of LICENSOR. LICENSEE agrees to indemnify and hold LICENSOR harmless for all customer-related problems, complaints, and/or discrepancies of any sort or description arising out of LICENSEE's activities, including replacement or repair of any product purchased from the Licensed Space.

13. Utilities. At its expense, LICENSOR will provide electricity, air conditioning, and heat during normal business hours for the Department when, and to the extent, in LICENSOR's reasonable judgment, necessary, but at least to the extent provided for the rest of the Store. LICENSEE agrees that, at its own cost and expense, it shall install and maintain a telephone for the purpose of making outside telephone calls. LICENSOR agrees to provide to LICENSEE a separate telephone extension for the purposes of identifying all of LICENSEE's outgoing telephone calls made from the Licensed Space. LICENSOR agrees to provide a telephone extension number through the Store's main switchboard for incoming LICENSEE telephone calls, with the initial installation costs to be incurred by LICENSEE. LICENSEE agrees to pay for all telephone calls identified by its telephone extension number. LICENSOR agrees to pay all real estate taxes on the Building during the term of this Agreement, all charges for water used in the Building, all other charges and assessments levied by the landlord on the Building, and all other charges assessed by any municipal authority and not pass such charges and assessments through to LICENSEE on a proportional basis.

14. Insurance Coverages.

(a) LICENSEE shall procure and obtain commercial general liability insurance coverage and products liability insurance coverage from insurance companies or carriers approved by LICENSOR of not less than one million dollars (\$1,000,000) combined single limit. Such coverage must include bodily injury, broad form property damage, premises/operations coverage, owner's protective coverage, blanket contractual liability, products liability, and completed operations liability. Such insurance must be obtained from companies and through brokers approved by and acceptable to LICENSOR that are licensed to sell insurance in the State of New York.

(b) Such insurance policies must further provide that copies of cancellation, modification, or termination notices will be sent to LICENSOR no later than thirty days prior to cancellation, modification, or termination. The language on the certificate of insurance will read as follows: "If any of the above-referenced insurance policies is canceled before the expiration date thereof or not renewed, or if the coverage of such policies is changed, the issuing company shall provide the additional insured with at least thirty days' prior written notice thereof." LICENSEE also agrees to deliver a copy of each insurance policy and all endorsements required in this Agreement to LICENSOR on the Commencement Date or within thirty days of the date of this Agreement, whichever is sooner, and annually thereafter during the Term, within at least thirty days of the renewal of such insurance coverage.

(c) Duplicate copies of the policies will be delivered to LICENSEE and LICENSOR within thirty days of the date of the execution of this Agreement or within five business days of the date of LICENSEE's occupying the Licensed Space, whichever is sooner, and annually thereafter within five business days of the date such coverages are renewed.

(d) LICENSOR, Jerome Weinrib, Evan Cole and his wife, Paulette Cole, Hudruff Realty, L.L.C., and ABC Carpet Co., Inc. must be listed as additional named insureds on LICENSEE's liability insurance coverages (CGL Endorsement CG 20 11 10 96) and as loss co-payees on LICENSEE's commercial property insurance coverages, as their interests may appear.

(e) To the extent permitted by state law, LICENSEE agrees to have its insurers on any insurance coverages that LICENSEE is required to maintain under the terms of this Agreement waive subrogation rights under this Agreement with respect to property damage and provide proof of same to LICENSOR in the form of a written notation on the certificate of insurance. Likewise, to the extent permitted by state law, LICENSOR agrees to have its insurers on any insurance coverages that LICENSOR is required to maintain under the terms of this Agreement waive subrogation rights with respect to both property damage and personal injury and provide proof of same to LICENSEE in the form of a written notation on the certificate of insurance.

(f) To the extent any claims are paid on LICENSEE's insurance during a policy year, LICENSEE agrees to immediately reinstate the minimum amount

of coverage so that the minimum amount of insurance coverage required in this Agreement is in force at all times during the Term. The amount of the minimum coverage to be maintained at all times during the Term is for an annual aggregate amount. Accordingly, to the extent that a claim is paid on the insurance policy at any time that reduces the amount of the annual aggregate, LICENSEE agrees to immediately purchase additional coverage to maintain the annual aggregate at the minimum coverage level throughout the remainder of the policy year and provide LICENSOR with proof of having purchased such additional coverage.

(g) All policies of insurance provided for in this Agreement must be issued by insurance companies that have had a general policyholders' rating for the five consecutive years immediately preceding and including the year the coverage is written of not less than "A+" and with a financial rating of not less than "A," as rated in the most current edition of A.M. Best Company's Insurance Reports.

(h) Each insurance policy required under the terms of this Agreement to be maintained by LICENSEE will state that it is: (i) primary coverage as respects any claims, losses, or liabilities arising out of LICENSEE's use of the Licensed Space; (ii) non-contributing; (iii) not supplemental to, nor in excess of, coverage that LICENSOR may carry or that may be available to LICENSOR. Each insurance policy will further state that any insurance coverage carried by LICENSOR will be excess insurance.

(i) No insurance required by this Agreement to be maintained by LICENSEE will be subject to more than a \$10,000 deductible limit or self-insurance amount without LICENSOR's prior written approval.

(j) Any insurance policy required of LICENSEE under this Agreement may be furnished by LICENSEE under a blanket policy carried by LICENSEE, but only if such blanket policy contains an "Aggregate Limit per Location" endorsement that guarantees a minimum amount of coverage available to LICENSOR equal to the insurance amounts required in this Agreement for the Licensed Space.

(k) LICENSEE agrees that all insurance coverages provided for pursuant to this Agreement will be on an "occurrence" basis and not on a "claims made" basis.

(l) LICENSEE agrees that if LICENSEE does not keep the required insurance coverages in force during the Term, LICENSOR will have the right, in addition to all other rights set out in this Agreement, but not the obligation, at any time and from time to time, and without notice, to procure the required insurance coverages and pay the premiums for the insurance, and that such premiums will be repaid by LICENSEE to LICENSOR immediately upon demand by LICENSOR. LICENSEE shall pay LICENSOR the cost of all such insurance premiums incurred by LICENSOR, together with interest thereon at the Prime Rate (as hereinafter defined), along with any additional costs and expenses incurred by LICENSOR in connection therewith, without prejudice to any other rights and remedies of LICENSOR under this

Agreement. It is expressly understood that procurement by LICENSOR of any such insurance coverage will not be deemed to waive or release the default of LICENSEE, or the right of LICENSOR, at LICENSOR's option, to terminate this Agreement by reason of such default as provided in this Agreement. LICENSEE covenants and agrees to pay LICENSOR all damages that LICENSOR may have sustained by reason of the failure of LICENSEE to obtain and maintain such insurance coverage, it being expressly declared that the damages of LICENSOR will not be limited to the amount of premiums paid by LICENSOR thereon.

(m) LICENSEE agrees that all employees hired by LICENSEE to work in the Licensed Space or who work in the Store will be covered with workers' compensation insurance and LICENSEE agrees to furnish LICENSOR with a certificate of insurance substantiating such coverage on the same basis as LICENSEE is required hereunder to provide proof of liability coverages.

(n) LICENSOR, its agents and employees make no representations that the limits of liability specified to be carried by LICENSEE pursuant to this Agreement are adequate to protect LICENSEE. If LICENSEE believes that any of such insurance coverage is inadequate, LICENSEE will obtain, at LICENSEE's sole cost and expense, such additional insurance coverage as LICENSEE deems adequate. LICENSEE acknowledges that the limits of insurance required in this Agreement will not, however, limit the liability of LICENSEE either in tort or contract under the terms of this Agreement with respect to LICENSEE's negligence and any such damage or harm proximately caused thereby, it being expressly agreed that none of the requirements contained in this Agreement as to the types, limits, or LICENSOR's approval of insurance coverage to be maintained by LICENSEE is intended to and will not in any manner limit, qualify, or quantify the liabilities and obligations assumed by LICENSEE under this Agreement or otherwise provided by law.

(o) LICENSEE agrees to bear the risk of loss and agrees to be responsible for obtaining its own insurance coverage on the contents of the Department and any improvements it places on the Licensed Space. LICENSEE is also required to obtain and maintain in force during the Term, adequate insurance coverage for any losses occasioned by the negligent or willful acts or omissions of LICENSEE and all others, but for LICENSOR. LICENSEE shall, at LICENSOR's request from time to time, provide LICENSOR with current certificates of insurance (in a form reasonably acceptable to LICENSOR) evidencing LICENSEE's compliance with this provision. Notwithstanding anything contained in this Agreement to the contrary, if the Licensed Space is damaged as a result of LICENSEE's negligence or if LICENSEE is the cause of such damage, regardless whether such loss is covered by insurance, LICENSEE shall pay LICENSOR the amount of any monetary damages LICENSOR incurs as a result of such loss. LICENSEE further agrees that the waiver of subrogation provision contained in this Agreement also applies to LICENSEE's personal property located in the Licensed Space. The insurance coverage that LICENSEE maintains on its property at its expense will be standard fire and extended coverage insurance with vandalism, malicious mischief, and sprinkler leakage endorsements (if applicable) on all its personal property, including removable trade fixtures, located in the Licensed Space.

and on improvements and all other alterations (including fixtures) made by LICENSEE, such coverage to be for an amount not less than the full insurable replacement cost of such insured items.

15. **Independent Status.** LICENSEE shall conduct its business solely for its own account and at its own risk, and LICENSOR will have no ownership or the right, title, or interest in or liability with respect to the business thereof, or (except as otherwise specifically provided in this Agreement with regard to LICENSEE's obligations to pay commissions) in the receipts, proceeds, or losses thereof, nor will LICENSOR be deemed to be a partner, joint venturer, or principal of LICENSEE.

16. **Credit.** LICENSEE will have no right or power to pledge LICENSOR's credit or to incur any obligations or make any commitments that will be binding upon LICENSOR, without LICENSOR's express prior written consent, it being the intent of this Agreement that the Department will constitute an independent and separate business, belonging in its entirety to LICENSEE, notwithstanding the fact that the Store and the departments thereof, including the Department, may be advertised as though it is a single establishment under LICENSOR's ownership, management, or otherwise. In the event of a dispute, this Agreement will be construed to preserve LICENSEE's independent operation as a stand-alone business.

17. **Compliance with Laws.** LICENSEE agrees at all times and at its own cost and expense to comply with all laws, ordinances, rules, and regulations of any applicable governmental agency or public authority with respect to or affecting (i) its use and occupancy of the Licensed Space, (ii) its hiring of employees (including all immigration laws), and (iii) LICENSEE's business or the conduct thereof. Likewise, LICENSOR agrees to comply with all laws, ordinances, rules, and regulations of any applicable governmental agency or public authority with respect to or affecting (i) its use and occupancy of the Building, (ii) its hiring of employees (including all immigration laws), and (iii) LICENSOR's business or the conduct thereof. Each party hereby agrees to defend and indemnify the other party and save it harmless from any and all losses, damages, liability, costs, or expenses resulting from any violation of any of the foregoing by the non-complying party regardless whether such violations originated before or after the date of this Agreement. LICENSEE will not be responsible for interior or structural alterations that are required as a result of any laws that are enacted subsequent to the date of this Agreement or changes in law that occur after the date of this Agreement.

18. **LICENSEE's Furniture, Fixtures, and Equipment.** All plans for installing fixtures (including signs) in the Licensed Space must be submitted to LICENSOR for its prior written consent, which consent will not be unreasonably withheld. LICENSEE shall, at its own cost and expense, purchase and install its furniture, fixtures, and equipment to be used by it in the Licensed Space. Such furniture, fixtures, and equipment may be located only within the Licensed Space and must be acceptable to LICENSOR. Title to such furniture, fixtures, and equipment will be and remain in LICENSEE at all times and LICENSEE will be totally responsible for the care and maintenance thereof. Upon the termination of this Agreement,

LICENSEE shall, at its own cost and expense, remove all such furniture, fixtures, and equipment and repair any damage to the Store that might be occasioned by such removal. LICENSEE agrees to pay any and all personal property taxes on its furniture, fixtures, equipment, and inventory in the Licensed Space and to keep such items fully insured at all times during the Term. LICENSOR will provide at its own cost and expense reasonable janitorial services for the care and cleaning of the Licensed Space consistent with the level of such service provided to non-licensed space within the Store.

19. Alterations and Improvements.

(a) LICENSEE agrees to accept the Licensed Space "as is," other than as is otherwise hereinbefore provided and to pay for all costs of building out and finishing out the Licensed Space for LICENSEE's use. LICENSOR agrees to provide the Licensed Space in broom clean condition without any need for repair.

(b) LICENSEE may not make any alterations or installations in or about the Licensed Space or the Store without LICENSOR's prior written consent, which LICENSOR agrees not to unreasonably withhold, delay, or deny. However, if LICENSOR deems it necessary to retain architectural or engineering supervision for the purpose of determining the structural soundness of any request made by LICENSEE for remodeling or rebuilding, LICENSEE agrees to pay the cost thereof. LICENSOR will be given a reasonable amount of time to review and approve the contractor and the plans and specifications for the work proposed by LICENSEE. If LICENSOR approves the contractor and such alterations or improvements, LICENSEE agrees that the alterations and improvements will be performed by LICENSEE in a first-class and professional manner, in compliance with all municipal codes, federal regulations, and applicable building standards by contractors and subcontractors that have comparable levels of insurance as required of LICENSEE hereunder.

(c) LICENSEE agrees that any such work will be performed so as not to adversely affect the structure, safety, systems, or services of the Store or allow liens to be filed on the Building or any part thereof, and LICENSEE agrees that all such work will comply with all building, safety, fire, and other codes and governmental requirements as well as all insurance requirements. Furthermore, LICENSEE agrees that all such work will be performed in a way that will not adversely impact, interfere with, or disrupt either LICENSOR or any other licensee in the Store and that LICENSOR will have the right to require LICENSEE to take reasonable steps to minimize such disruptions and to keep the construction work area free of dust and accumulation of debris and the hallways and passageways open and passable at all times.

20. Maintenance and Repair of the Licensed Space.

(a) No rights have been granted to LICENSEE, except as set forth in this Agreement, with respect to the outside walls, roof, doors, or windows of the Store,

and LICENSEE may not use them for any purpose whatsoever. LICENSEE will not deface or damage any part of the Licensed Space or the Store. LICENSEE shall take care to maintain the Licensed Space in the same condition in which the Licensed Space was originally delivered to LICENSEE, reasonable wear and tear excepted.

(b) LICENSOR shall, at its own cost and expense, promptly make all repairs to either the Licensed Space or the property of LICENSOR or other licensees or tenants of the Store that may be required, except the repairs necessitated because of the negligence or misuse thereof by LICENSEE, its agents, servants, employees, visitors, or customers. LICENSOR will, at its own cost and expense, promptly make all repairs to the property of LICENSEE that may be required because of the gross negligence or intentional acts of LICENSOR, its agents, servants, employees, visitors, or customers.

21. Release and Indemnification.

(a) LICENSOR WILL NOT BE LIABLE, AND LICENSEE WAIVES ALL CLAIMS, FOR INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR LOSS OF PROPERTY SUSTAINED BY LICENSEE OR ITS INVITEES OR GUESTS RESULTING FROM THE IMPROVEMENTS OR ANY PART THEREOF OR ANY OF LICENSOR'S EQUIPMENT OR APPURTENANCES BEING OUT OF REPAIR, OR RESULTING DIRECTLY OR INDIRECTLY FROM ANY ACT OF LICENSEE, LICENSOR, OR ANY OCCUPANT OF THE BUILDING OR OF ANY OTHER PERSON, OR FROM ANY OTHER CAUSE WHATSOEVER EXCEPT FOR ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY LICENSOR, INCLUDING WITHOUT LIMITATION SUCH CLAIMS FOR DAMAGE RESULTING FROM: (i) equipment functioning improperly; (ii) LICENSOR's failure to keep the Licensed Space repaired; (iii) injury done or occasioned by wind; (iv) any defect in or failure of plumbing, heating, or air conditioning equipment, electrical wiring, or installation thereof, gas, water, or steam pipes, stairs, balconies, porches, railings, or sidewalks; (v) broken glass; the backing up of any sewer pipe or downspout; the bursting, leaking, or running of any tank, tub, wash stand, toilet, waste pipe, drain, or any other pipe or tank in, on, or about the Licensed Space; the escape of steam or hot water; (vi) the falling of any fixture, plaster, or stucco; and (vii) water, snow, or ice being on or coming through the roof or any skylight, trap door, stairs, walks, or any other place on or near the Licensed Space, the Store, or otherwise.

(b) LICENSEE hereby indemnifies LICENSOR and covenants to hold it harmless from any and all liability, costs, charges, and expenses of any kind, sort, or description arising directly or indirectly from LICENSEE's breach of this Agreement, LICENSEE's occupancy of the Licensed Space, any injury to person or damage to property occurring in the Licensed Space or in connection with LICENSEE's use thereof, except for acts of gross negligence or willful misconduct by LICENSOR, its agents, servants, and/or employees.

22. Representations. LICENSOR represents to LICENSEE that this Agreement and the grant of the license hereunder will not conflict with or violate the

terms of any lease or other licensing arrangement relating to the Store within which the Licensed Space is located. LICENSOR represents that it has proper authority and has obtained all necessary consents to license the Licensed Space. LICENSOR further represents to LICENSEE that to the best of LICENSOR's knowledge, no permission, approval, or consent by third parties or governmental authorities is required in order for LICENSOR to enter into this Agreement.

23. Relocation.

(a) LICENSOR reserves the right, in its sole discretion, to change the Licensed Space, or any part or parts thereof, to other areas located in the Store, upon thirty days' prior notice to LICENSEE, which notice will include the date on which LICENSEE will be required to relocate and a description of the space to which LICENSEE will be relocated. Such subsequent space will have the same or substantially the same square footage and configuration within the Store as the previous Licensed Space and LICENSOR agrees to use commercially reasonable efforts to provide LICENSEE with comparable space as the Licensed Space.

(b) LICENSOR will pay all out-of-pocket costs and expenses of relocating LICENSEE (including the cost of preparing such comparable space for occupancy), provided LICENSEE furnishes to LICENSOR invoices, receipts, or other evidence reasonably satisfactory to LICENSOR relating to such out-of-pocket expenses. In the event of such relocation, such alternative space will for all purposes be deemed the "Licensed Space" hereunder and this Agreement will continue in full force and effect without any change in the other terms or conditions of this Agreement and without any increase in the amount of License Fees. Upon LICENSEE's receipt of said notice of relocation, LICENSEE will have the option for a period of fifteen business days from and after the date of receipt of such notice to elect to either cancel this Agreement or to cause all of its furniture, fixtures, equipment, and inventory to be moved to the new Licensed Space as designated in such notice, to be effected on or before the effective date of such relocation.

(c) For purposes of this Section 23, "comparable space" means substantially equivalent to or better than the initial Licensed Space without regard to the level of LICENSEE's finish-out of the Licensed Space.

24. Assignment and Subletting. This Agreement may not be assigned in whole or part, or the Licensed Space sublet in any manner whatsoever, by LICENSEE without the prior written consent of LICENSOR, which consent may be withheld for any reason whatsoever, and any attempts to do so will, at LICENSOR's election, be void and of no force and effect.

25. Interruption of Service; Fire and Other Casualty; Condemnation; Termination of License.

(a) Except for acts of gross negligence and willful misconduct by LICENSOR, LICENSOR will not be liable to LICENSEE in any manner whatsoever for

any interruption, failure, or discontinuance of any service, facility, or supply that LICENSOR is required or has undertaken to furnish to LICENSEE or in the use by LICENSEE of the Licensed Space. LICENSEE will not be entitled to any reimbursement, compensation, damage, abatement, or other relief for the interruption or failure, discontinuance, or suspension of any such service, facility, or supply in connection with the use of the Licensed Space.

(b) If the Licensed Space is damaged by fire or other casualty, LICENSOR will not be liable for any loss, damage, or interruption of business that LICENSEE suffers by reason thereof.

(c) If, during the Term, the Licensed Space, or any portion thereof, (i) is substantially damaged or destroyed by fire, wind, or other casualty, (ii) is substantially damaged or destroyed by the negligence, gross negligence, or intentional tort of LICENSEE or any person in or about the Licensed Space with LICENSEE's express or implied consent, or (iii) if any mortgagee of LICENSOR requires that the insurance proceeds payable as a result of a casualty be applied to the payment of the mortgage debt or (iv) in the event of any material, uninsured loss to the Licensed Space, or any portion thereof, LICENSOR may elect, by notice to LICENSEE sent no later than sixty days from the date of the occurrence of the casualty loss, to terminate this Agreement and the License Fees will be abated for the unexpired portion of this Agreement, effective as of the date of the casualty loss.

(d) If, during the Term, the Licensed Space, or any portion thereof, is damaged by fire, wind, or other casualty, but not to such an extent that rebuilding and repairs cannot be completed within a reasonable period of time from the date of the casualty, LICENSOR may elect, by notice to LICENSEE sent not later than sixty days from the date of the occurrence of the casualty loss, at LICENSOR's sole option, to rebuild or repair the Licensed Space to substantially the same condition that the improvements existed prior to such damage or to terminate this Agreement and the License Fees will be abated for the unexpired portion of this Agreement, effective as of the date of the casualty loss.

(1) If LICENSOR elects to rebuild or repair the Licensed Space, this Agreement will continue and the License Fees payable under this Agreement will be adjusted equitably by LICENSOR and LICENSEE from the date of the casualty through the end of the reconstruction period to reflect the diminished value of the Licensed Space and the diminished value of the portion of the Building that was not damaged. Notwithstanding anything contained in this Agreement to the contrary, LICENSOR will not be required to expend more for such repairs and rebuilding than the net insurance proceeds actually received as a result of such casualty that are allocable to the Licensed Space after any payment required to be paid to the mortgagee under any mortgage.

(2) If LICENSOR elects not to rebuild or repair the Licensed Space, this Agreement will terminate, except for any outstanding obligations or indemnities assumed by LICENSEE under this Agreement, and the License Fees will

be abated for the unexpired portion of this Agreement, effective as of the date set out in the notice from LICENSOR to LICENSEE following the occurrence of the casualty. If there is an early termination of this Agreement under this Section 25, both parties will automatically be released from all further liability under this Agreement except as to matters of liability that will have accrued and remain unsatisfied as of the date of such termination (including LICENSEE's liability for any damage or destruction to the Licensed Space as a result of LICENSEE's negligence, gross negligence, or intentional tort) and LICENSOR will have the right to retain all insurance proceeds it collects.

(e) If, during the Term, the Licensed Space, or any portion thereof, is condemned by any public authority, sold under threat of taking by eminent domain, or if the lease under which LICENSOR occupies the Licensed Space is canceled, non-renewed, or terminated by any reason whatsoever, LICENSOR may elect, by notice to LICENSEE sent no later than sixty days from the date of the occurrence of the event, to terminate this Agreement and the License Fees will be abated for the unexpired portion of this Agreement, effective as of the date of the event. By signing this Agreement, LICENSEE acknowledges that the Store is located on leased premises and that this Agreement is subject to the terms and conditions of such lease agreement. LICENSOR represents that the underlying lease is in good standing and that there is nothing in such lease that prevents or limits LICENSOR from granting this license or entering into this Agreement.

(f) If there is an early termination of this Agreement under this Section 25, both parties will automatically be released from all further liability under this Agreement except as to matters of liability that will have accrued and remain unsatisfied as of the date of such termination (including LICENSEE's liability for any damage or destruction to the Licensed Space as a result of LICENSEE's negligence, gross negligence, or intentional tort) and LICENSOR will have the right to retain all insurance proceeds it collects.

26. **Liens.** LICENSEE may not suffer or permit any UCC filing or lien to exist on the Store, the Licensed Space, or any of the furniture, fixtures, signs, equipment, goods, or inventory located in the Licensed Space that would in any way limit or restrict LICENSEE from complying with the terms of this Agreement and being able to sell LICENSEE's goods and inventory in the ordinary course of business. If any such UCC filing or lien is filed on LICENSEE's furniture, fixtures, signs, equipment, goods, or inventory that unduly restricts LICENSEE from complying with the terms of this Agreement and ability to sell LICENSEE's goods and inventory in the ordinary course of business, LICENSEE shall promptly discharge the same at LICENSEE's sole cost and expense and LICENSEE agrees to indemnify and hold LICENSOR harmless regarding any UCC filings or liens that conflict with this Agreement. Notwithstanding the above, LICENSOR agrees that LICENSEE will have the right to pledge its furniture, fixtures, signs, equipment, goods, and inventory located in the Licensed Space to LICENSEE's commercial lenders and LICENSOR agrees to waive any landlord's or other liens that it might have on LICENSEE's furniture, fixtures, signs, equipment, goods, and inventory located in the Licensed Space.

27. Default by LICENSEE.

(a) If LICENSEE fails to make any payment within fourteen days after notice of breach is given by LICENSOR to LICENSEE, LICENSOR will have the right to terminate this Agreement forthwith by notice to such effect by LICENSOR to LICENSEE.

(b) In the event of a material non-monetary breach by LICENSEE of its obligations under this Agreement, LICENSOR will have the right to terminate this Agreement. Upon a material non-monetary breach of this Agreement by LICENSEE, LICENSOR may give LICENSEE notice of such breach, which notice shall specify the exact nature of the breach and shall expressly state the intention LICENSOR to terminate this Agreement or avail itself of such other remedies as are available to it if the breach is not remedied within thirty days after receipt of such notice (the "Cure Period"). If, after the expiration of the Cure Period, LICENSEE has failed to or refuses to remedy such breach, this Agreement may be terminated upon notice given by LICENSOR to LICENSEE. If the breach is curable but has not been cured within the thirty day period, and LICENSEE has been diligently taking all steps necessary to cure the default as promptly as possible, with the written permission of LICENSOR, LICENSEE will have an additional mutually agreed upon time in which to cure such breach so long as LICENSEE continues to diligently take all steps necessary to cure the breach, after which LICENSOR may terminate this Agreement upon notice to LICENSEE if the breach has still not been cured.

(c) If either party files a petition in bankruptcy, is adjudicated a bankrupt or files a petition or otherwise seeks relief under or pursuant to any bankruptcy, insolvency or reorganization statute or proceeding or it becomes insolvent or makes an assignment for the benefit of its creditors, or a custodian, receiver or trustee is appointed for it or a substantial portion of its business or assets, this Agreement shall terminate automatically and forthwith. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of LICENSEE's assets or business will have any right to continue this Agreement if this Agreement is terminated pursuant to this Section 27(c).

(d) In the event of a sale or transfer of all or substantially all of the assets of LICENSEE, a merger or consolidation to which LICENSEE is a party and is not the surviving entity, or a sale or transfer of all or any part of the equity interests of the current principals of LICENSEE so as to result in a change in the ownership, effective voting control or management of LICENSEE, LICENSOR will have the right to terminate this Agreement forthwith by notice to such effect to LICENSEE.

(e) Notwithstanding anything to the contrary herein contained, if LICENSEE is default under the terms of this Agreement two or more times within a one hundred eighty day period, regardless of whether such events of default are timely cured, such defaults will be deemed deliberate and not curable on the last

occasion thereof, thereby giving LICENSOR the immediate right to have recourse to all LICENSOR's remedies hereunder.

(f) Upon termination of this Agreement, LICENSOR may enter upon the Licensed Space by picking or changing locks if necessary and take possession of the Licensed Space, without terminating this Agreement, and expel or remove all persons and property therefrom, without being (i) deemed guilty of any manner of trespass, (ii) liable for prosecution, or (iii) liable for any claim for damages therefor, and relet the Licensed Space or any part thereof, for all or any part of the remainder of the Term of this Agreement to a party satisfactory to LICENSOR and at such License Fees as LICENSOR may with reasonable diligence be able to secure. LICENSEE shall reimburse LICENSOR for the cost of locating a new licensee, including, without limitation, renovation expenses and broker's commissions. LICENSEE agrees that LICENSOR will be entitled to the benefits of all provisions of law respecting the speedy recovery of land and tenements held over by LICENSEE, including proceedings for forcible entry and detainer. LICENSEE shall compensate LICENSOR for its reasonable expenses of making such entry and repossession.

(g) The termination of this Agreement for any cause will not prejudice LICENSOR's right to recover any License Fees or other amounts accrued to it hereunder and unpaid at the time of said termination and any other damages for breach to the extent that such additional damages may be recoverable. No expiration or termination of this Agreement will prejudice any cause of action or claim of LICENSOR against LICENSEE. Notwithstanding the expiration or any termination of this Agreement, LICENSOR will have and hereby reserves all rights and remedies that it has, or that are granted to it by operation of law, to collect License Fees payable to it pursuant to this Agreement and to be compensated for damages for breach of this Agreement.

(h) The remedies of LICENSOR hereunder will be deemed cumulative and no remedy of LICENSOR, regardless whether exercised by LICENSOR, will be deemed to be an exclusion of any other.

28. Default by LICENSOR. Each of the following will constitute a default by LICENSOR under this Agreement:

(a) LICENSOR fails to make any payment within five days of the date due.

(b) LICENSOR breaches a material, non-monetary obligation under this Agreement and such breach remains uncured for thirty days after the date of LICENSOR's receipt of written notice of such breach.

(c) No default by LICENSOR hereunder will constitute an eviction or disturbance of LICENSEE's use and possession of the Licensed Space or render LICENSOR liable for damages or entitle LICENSEE to be relieved from any of LICENSEE's obligations hereunder (including the obligation to pay the License Fees)

or grant LICENSEE any right of deduction, abatement, set-off, or recoupment or entitle LICENSEE to take any action whatsoever with regard to the Licensed Space or LICENSOR until twenty business days after LICENSEE has given LICENSOR notice specifically setting forth such default by LICENSOR, and LICENSOR has failed to cure such default within said twenty business day period, or if such default cannot reasonably be cured within said twenty business day period then within an additional reasonable period of time so long as LICENSOR has commenced curative action within said twenty business day period and thereafter is diligently attempting to cure such default. If LICENSOR fails to cure such default within said twenty business day period, or within said additional reasonable period of time, LICENSEE will have the right to cure such default and deduct the cost of curing same, plus interest at a rate equal to Prime Rate plus 2 percent, from the next succeeding licensee fee installment(s) owed by LICENSEE to LICENSOR hereunder.

29. **Waiver of Default.** No waiver by the parties of any default or breach of any term, condition, or covenant of this Agreement will be deemed to be a waiver of any other breach of the same or other term, condition, or covenant contained herein, nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of LICENSOR to insist upon the performance by LICENSEE in strict accordance with the terms hereof. No provision of this Agreement may under any circumstances be deemed to have been waived by either party here to unless such waiver is in writing and signed by the party charged with such waiver. LICENSEE agrees that the receipt by LICENSOR of the License Fees, even with the knowledge of the breach of any covenant or condition of this Agreement by LICENSEE, shall not be deemed to be a waiver of such breach and no provision of this Agreement will be deemed to have been waived by LICENSOR unless such waiver is in writing and signed by LICENSOR.

30. **Surrender of Licensed Space.** Upon the expiration or other termination of the Term, LICENSEE shall quit and surrender the Licensed Space to LICENSOR broom clean, in good order and condition, ordinary wear and tear and acts of negligence by LICENSOR excepted. All fixtures, furniture, equipment, and inventory of LICENSEE must be promptly removed from the Licensed Space immediately thereafter at the sole cost and expense of LICENSEE. No act or thing done by LICENSOR or LICENSOR's agents during the Term will be deemed an acceptance of a surrender of the Licensed Space and no agreement to accept such surrender will be valid unless it is in writing and signed by LICENSOR. LICENSEE shall notify LICENSOR in writing at least thirty days prior to vacating the Licensed Space to arrange a mutually convenient time to meet LICENSOR for a joint inspection of the Licensed Space prior to vacating. To the extent that LICENSEE fails to comply with this provision of the Agreement and LICENSOR incurs any expense in bringing the Licensed Space up to compliance with this provision, LICENSEE agrees to pay to LICENSOR any cost or expense incurred by LICENSOR as a result in surrendering the Licensed Space or involved in restoring the Licensed Space to the standards set forth in this Agreement, immediately upon demand.

31. **Right to Use Name.** If LICENSEE ceases to be licensed by LICENSOR for any reason, LICENSEE will not thereafter use or permit the use of the phrase "ABC Home" alone, or in any combination in the name or trademark of any corporation, partnership, or other business in which LICENSEE is associated in any capacity, directly or indirectly. LICENSEE covenants that it will not use, after the end of the Term, the name "ABC" in any manner, shape, or form, in any business or employment, nor the designation "Formerly with ABC" or any similar designation.

32. **Non-Competition, Non-Interference, and Non-Solicitation Agreement.** During the Term and for a period of one year after the termination of this Agreement for any reason, LICENSEE may compete with LICENSOR in the retail sales of the goods described in this Agreement, but only so long as any stores owned or operated by LICENSEE are not located within the areas bounded by 34th Street on the North, Houston Street on the South, the East River on the East, and the Hudson River on the West or within a one mile radius of any of LICENSOR's stores in New York City or within a five mile radius of any store LICENSOR operates outside of New York City. However, notwithstanding this restriction, LICENSEE will be permitted to sell to vendors within this restricted area on a wholesale basis so long as LICENSEE does not engage in any retail sales within the proscribed area.

(a) Furthermore, LICENSEE agrees that it will not, either during the term of this Agreement and for a period of one year immediately following the expiration or termination of the Agreement, for any reason whatsoever, either directly or indirectly, interfere with LICENSOR's business or operations, solicit for hire or hire any of LICENSOR's employees or otherwise interfere with or disrupt either the employment relationship between LICENSOR and any of its employees or the relationship between LICENSOR and any of its vendors, suppliers, or contractors. Likewise, LICENSOR agrees that it will not, either during the Term of the Agreement and for a period of one year immediately following the expiration or termination of this Agreement for any reason whatsoever, either directly or indirectly, interfere with LICENSEE's business or operations, solicit for hire or hire any of LICENSEE's employees or otherwise interfere with or disrupt either the employment relationship between LICENSEE and any of its employees or the relationship between LICENSEE and any of its vendors, suppliers, or contractors.

(b) The parties agree that a breach or violation of the restrictive covenants set forth in this Section 32 by a party will entitle the non-breaching party as a matter of right to seek an injunction issued by any court of competent jurisdiction, restraining any further or continued violation thereof. Such right to seek an injunction will be cumulative and in addition to, and not in lieu of, any other remedies to which the non-breaching party may show itself justly entitled. The restrictive covenants will be construed as an agreement independent of any other provision of this Agreement, and the existence of any claim or cause of action of any party against the other, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the non-breaching party of these restrictive covenants.

(c) If a party violates these restrictive covenants and the non-breaching party brings legal action for injunctive or other relief, the non-breaching party will not, as a result of the time involved in obtaining relief, be deprived of the benefit of the full one year period of the restrictive covenants. Accordingly, the restrictive covenants will be deemed to have a duration of one year as specified above, computed from the date the relief is granted, but excluding the time between the period when the restrictive covenants began to run and the date of the first violation of the restrictive covenants.

(d) The parties agree that the restrictive covenants are with respect to geographic area, duration, and scope of activity are reasonable and the enforcement thereof would not be unduly burdensome on the parties. However, if any court determines that the geographic area, duration or scope of activity of an restrictive covenant is unenforceable, it is the intention of the parties that the restrictive covenant will not thereby be terminated but will be deemed amended to the extent required to render it valid and enforceable.

33. **Repurchase of Inventory.** In connection with the inception of its activities within the Licensed Space under this Agreement, LICENSEE agrees to purchase all the inventory delivered within the three months preceeding this Agreement to LICENSOR by LICENSEE at LICENSOR's 888 Broadway location and specifically labeled Abyss for Steven Drew Collection and/or Habidecor. LICENSEE agrees, however, to repurchase at its discretion other inventory of LICENSOR. All other inventory previously sold by LICENSEE to LICENSOR shall be removed by LICENSOR from the 888 Broadway location. The repurchase price for each item included in the inventory will equal its cost as paid by LICENSOR to LICENSEE. The nature and quantity of items included in the inventory will be confirmed by an inventory count performed by a representative of LICENSOR and a representative of LICENSEE as of the effective date at a time to be mutually agreed upon. At the time the total price of the repurchased inventory is determined, LICENSOR will first pay LICENSEE any past due amounts owed by LICENSOR to LICENSEE and then LICENSEE shall pay the "net" amount due to LICENSOR in six equal monthly installments during the six months immediately following the date of the inventory, with such payments made out of or offset against the monthly gross sales proceeds payable to LICENSEE under Section 4 above. Such payments will be without interest.

34. **Jurisdiction; Venue.** This Agreement is to be governed by and construed and enforced in accordance with the laws of the State of New York. Each party further waives any objection to venue in the state of New York and any objection to an action or proceeding in such state on the basis of *forum non conveniens*. Each party further agrees that any action or proceeding brought against such party may be brought only in a court of the state of New York or in a federal court located in such state.

35. **Jurisdiction and Service of Process, Arbitration.** Each party hereby irrevocably submits to the jurisdiction of the state and federal courts of the State of

New York in connection with any action or proceeding arising out of or relating to this Agreement, and each party hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such state or federal courts. Each party hereby irrevocably consents to the service of any and all process in any such action or proceeding by notice as specified in Section 39. If the parties are unable to resolve a dispute regarding any aspect of this Agreement, either party may notify the other party of its decision to submit the dispute to binding arbitration if the amount in dispute is not more than \$20,000, which arbitration will be handled in the following manner. As concluded by the parties on the advice of counsel, and as evidenced by the signatures of the parties, any controversy between the parties involved in the construction or application of any of the terms, covenants, or conditions of this Agreement, will, on the written request of one of the parties served on the other party, be submitted to arbitration, and such controversy, if in an amount of \$20,000 or less, will be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Provided, however, that the right of either party to terminate this Agreement, as provided for in this Agreement, will not be subject to arbitration. The arbitration will be governed by the Arbitration Law of the State of New York, and, when not in conflict with such law, by the general procedures in the Commercial Arbitration Rules of the American Arbitration Association. The arbitrators will not have the power to add to, modify, detract from, or alter in any way the provisions of this Agreement or any amendments or supplements to this Agreement. The written decision of the arbitrator(s), if the amount in dispute or controversy is \$20,000 or less, will be conclusive and binding on the parties. No arbitrator is authorized to make an award of punitive or exemplary damages. Each party shall pay for one-half (1/2) of all the costs relating to the arbitration unless the arbitrator(s) assess a greater portion of the costs to the party that does not prevail in the arbitration hearing. The decision of the arbitrator(s) will be final and non-appealable, and may be enforced according to the laws of the State of New York.

36. Resolution by Litigation. If the dispute, controversy, or claim involves an amount in excess of \$20,000, the parties may agree to submit the dispute, controversy, or claim to (i) non-binding mediation, (ii) non-binding arbitration through the arbitration procedures set out above for resolution, or (iii) litigate the matter. In the event of any litigation, each party hereby waives the right to a trial by jury, to the extent not prohibited by law, in any action or proceeding based upon, or related to, the subject matter of this Contract. This waiver of trial by jury is knowingly, intentionally, and voluntarily made by each party and each party acknowledges that the other party has not made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Each party also acknowledges that it has been represented in the signing of this Contract and in the making of this waiver of trial by jury by independent legal counsel. Each party agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

37. **Merger.** All understandings and agreements heretofore entered into between the parties regarding the subject matter of this Agreement are hereby merged into this Agreement, which alone fully and completely expresses their agreement with respect to the subject matter of this Agreement, and this Agreement has been entered into after full investigation by both parties, and neither party is relying upon any statements or representations by the other party not embodied in this Agreement. This Agreement may not be modified, except by an instrument in writing signed by the parties.

38. **Non-Waiver.**

(a) The failure of either party to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of, this Agreement or of any of the provisions set forth or hereafter adopted by said party will not prevent a subsequent act that would have originally constituted a violation from having all the force and effect of any original violation. The receipt by LICENSOR of License Fees with knowledge of the breach of any covenant will not be deemed to have been waived by LICENSOR unless such waiver is in writing and signed by LICENSOR.

(b) No payment by LICENSEE or receipt by LICENSOR of a lesser amount of License Fees stipulated in this Agreement will be deemed to be other than on account of the earliest stipulated License Fees, nor will any endorsement or statement of any check or any letter accompanying any check or payment as License Fees be deemed in accord and satisfaction, and LICENSOR may accept such check or payment without prejudice to LICENSOR's right to recover the balance of such License Fees or pursue any other remedy provided in this Agreement.

39. **Notice.** In order to be effective, any notice under this Agreement must be in writing. Notices must be sent either by national overnight courier service for next day delivery or by certified mail, return receipt requested, postage prepaid, addressed to the recipients as specified below, and such notice will take effect when actually received or five business days after the date it is postmarked by the United States Postal Service, whichever is sooner. The address of each party is as follows:

LICENSOR

ABC Home Furnishings, Inc.
38 E. 19th Street, 8th Floor
New York, New York 10003
Att'n: David Lauber, CFO

LICENSEE

Abyss-European Towels, Inc.
Habidecor U.S.A., Inc.
Windsor Industrial Park
92 North Main Street - Bldg. 3C
Windsor, NJ 08561
Att'n: Katie Johnson-Hill

with copy to:

J. Walker Holland
Holland, Johns, Schwartz & Penny, L.L.P.
306 West Seventh Street, Suite 500
Fort Worth, Texas 76102-4982
Phone: 817-335-1050

Theodore. J. Auerbach
Zaslav & Auerbach, P.C.
30 Vesey Street
New York, New York 10007
Phone: 212-233-5956

From time to time either party may designate another address within the forty-eight contiguous states of the United States of America for all purposes of this Agreement or add additional addresses by giving the other party not less than thirty days' advance notice, in accordance with the provisions of this Agreement, of such change of address.

40. **Recourse Limitation.** The obligations incurred by LICENSOR under and with respect to this Agreement do not and will not constitute personal obligations, and do not and will not involve any personal liability on its part, or on the part of any officer, director, or shareholder of LICENSOR. LICENSEE specifically agrees to look solely to LICENSOR's interest in the Building in the recovery of any judgment from LICENSOR, it being agreed that LICENSOR will never be personally liable for any such judgment. The foregoing sentence will not apply to any payments required to be made by LICENSOR to LICENSEE pursuant to Section 4(d).

41. **Legal Construction.** If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable under present or future laws effective during the Term in any respect, and the basis of the bargain between the parties is not destroyed or rendered ineffective thereby, such invalidity, illegality, or unenforceability, to the extent possible, will not affect any other provision of this Agreement. Moreover, so far as is reasonable and possible, effect will be given to the intent manifested by the portion held invalid, illegal, or unenforceable. It is further the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision invalid, illegal, or unenforceable and the other of which would render the provision valid, legal, or enforceable, then the provision will have the meaning that renders it valid, legal, or enforceable.

42. **General Rules of Construction.** This Agreement will not be strictly construed either for or against either LICENSOR or LICENSEE, but this Agreement will be interpreted in accordance with the general tenor of the language of this Agreement in an effort to reach an equitable result. No remedy or election given by any provision in this Agreement will be deemed exclusive unless so indicated, but each will, wherever possible, be cumulative with all other remedies in law or equity. The parties acknowledge that this Agreement has been freely negotiated by both parties and that each party (and its counsel, if any) has had the opportunity to review and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

43. **Captions.** The headings and captions contained in this Agreement are inserted for convenience of reference only, and are not to be deemed a part of or to be used in construing this Agreement. The captions in no way define, describe, amplify, or limit the scope or the intent of this Agreement or any of the provisions of this Agreement. All references in this Agreement to sections or subsections thereof refer to the corresponding section or subsection of this Agreement unless specific reference is made to such sections or subsections of another document.

44. **Counterparts.** This Agreement may be signed in multiple counterparts, each of which will be an original and all such counterparts together will represent but one and the same instrument; but in making proof of this Agreement it will not be necessary to produce or account for more than one such counterpart. The counterpart signed and held by LICENSOR will control in the event of any dispute or in any cases of differences between the counterparts. This Agreement becomes effective when one or more of the counterparts has been signed by each of the parties and delivered to the other party.

45. **Force Majeure.** Neither LICENSOR nor LICENSEE will be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which means acts of God, strikes, material or labor restrictions by any governmental authority, insurrections, war, court orders, civil riot, floods, requisition or order of any governmental body or authority, and any other cause not reasonably within the control of either LICENSOR or LICENSEE and that either LICENSOR or LICENSEE, by the exercise of reasonable diligence, is unable, either wholly or in part, to prevent or overcome. However, nothing in this Section 45 will relieve LICENSOR of its responsibility to pay, on a timely basis, all monetary obligations owed to LICENSEE, as set out in this Agreement, or its responsibility to provide the insurance coverages required in this Agreement.

46. **Time is of the Essence.** In all instances where LICENSEE is required under this Agreement to pay any amount or do any act at a particular indicated time or within any indicated period of time, it is understood that time is of the essence. All performance dates, time schedules, and conditions precedent to exercising any right will be strictly adhered to without delay except where otherwise expressly provided. In computing any period of time by days as provided in this Agreement, the date of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included unless the last day of any time period stated in this Agreement falls on either a Saturday or Sunday or falls on a legal holiday recognized by the United States Postal Service, then the duration of such time period will be extended so that it ends on the next succeeding day that is not a Saturday, Sunday or legal holiday recognized by the United States Postal Service.

47. **Survival.** The parties expressly agree that (i) all of their obligations hereunder that have not been fully performed, (ii) all of their warranties, representations, covenants, and indemnity provisions contained in this Agreement, and (iii) all provisions of this Agreement that contemplate performance of either party after

the expiration or early termination of reason, the surrender or return of possession of the Licensed Space for any reason set out in this Agreement.

48. **Business Day.** As used in this Agreement, the term "business day" means any day of the week, Monday through Friday, that is not recognized by the United States Postal Service as a national holiday and on which national banks are open for business.

49. **Successors and Assigns.** The terms, provisions, and covenants contained in this Agreement will apply to, inure to the benefit of, and be binding upon the parties and their successors, and permitted assigns, but this provision will in no way alter or affect the restrictions on assignment and subletting or sublicensing to LICENSEE under this Agreement.

50. **Set-off.** LICENSOR will have the right to set-off any indebtedness or other obligations of LICENSEE under this Agreement or otherwise (absolute or contingent, matured or unmatured) against any obligations of LICENSOR to LICENSEE.

SIGNED on the date first set out above.

LICENSOR:

ABC HOME FURNISHINGS, INC.

By: David Lauber

David Lauber, CFO

LICENSEE:

ABYSS-EUROPEAN TOWELS, INC

By: Kate E. Johnson-Hel

Title: V.P. of U.S. Operations

LICENSEE:

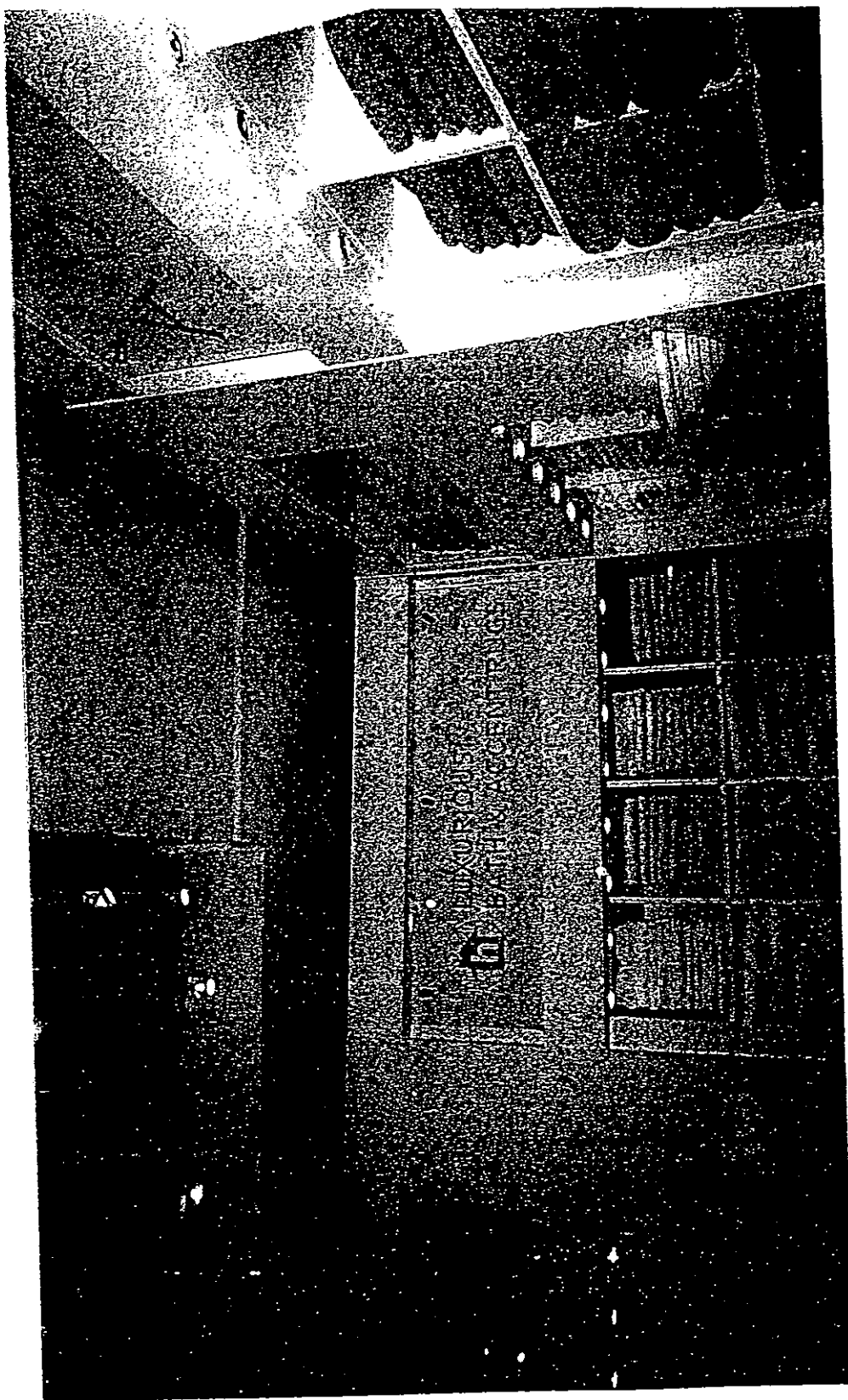
HABIDECOR U.S.A., INC

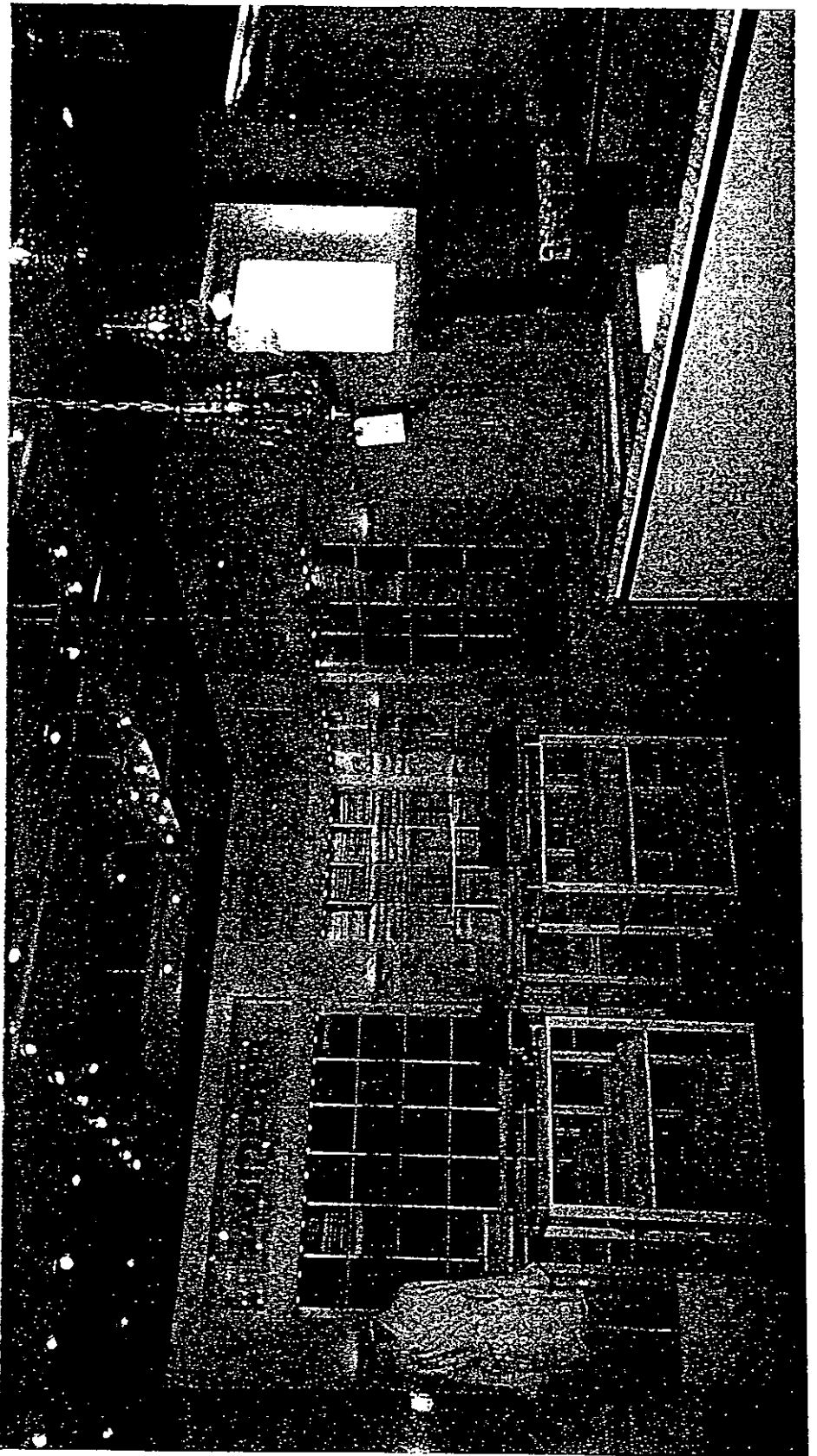
By: Kate E. Johnson-Hel

Title: V.P. of U.S. Operations

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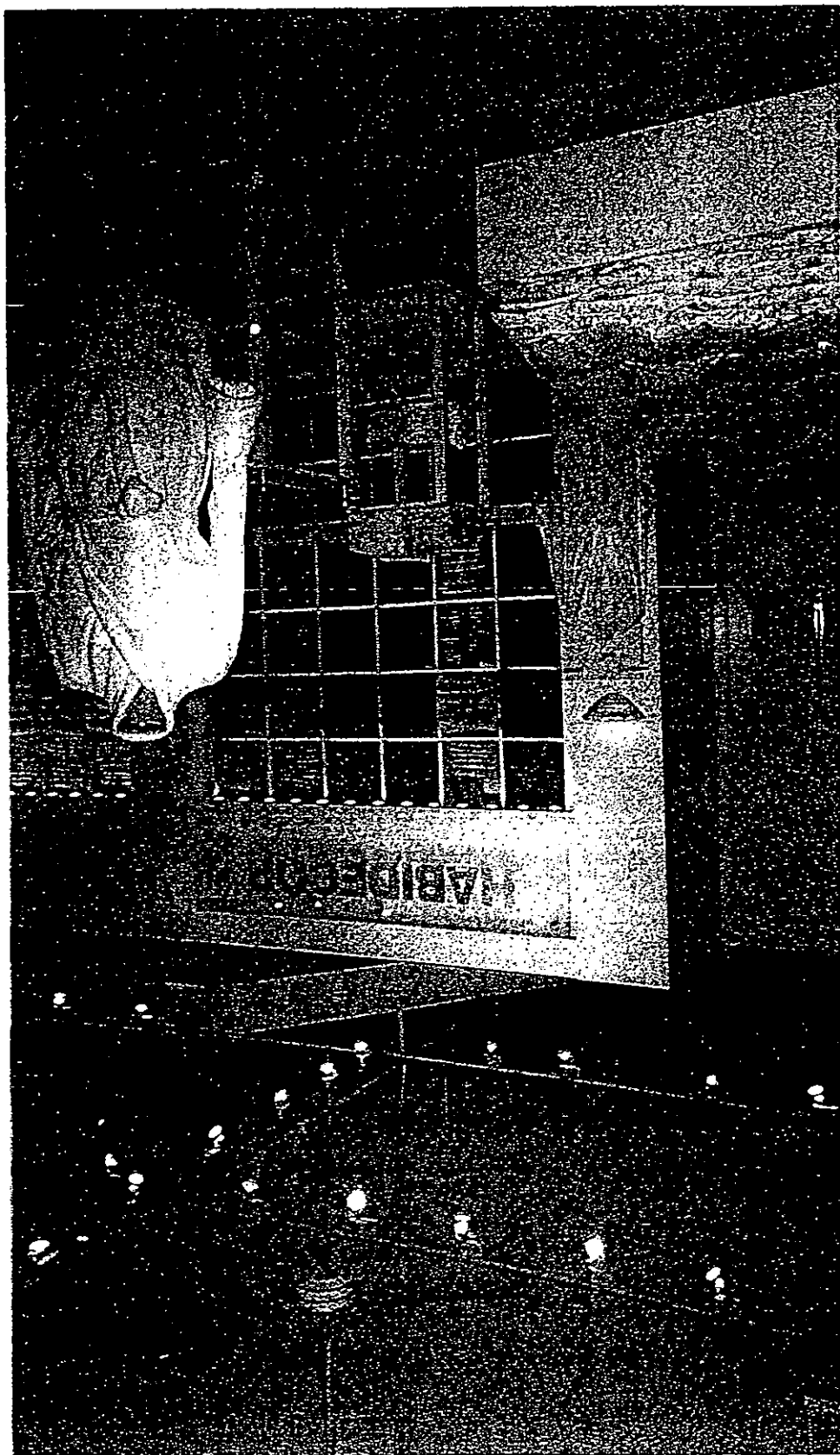
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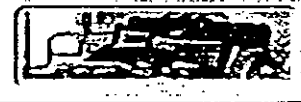
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Steven Drew readies new bath shop

By Staff
Home Textiles Today – 10/7/2002 3:22:00 PM

New York — In addition to bowing his latest introductions in Abyss towels, Habidecor rugs, in addition to Steven Drew bedding, Steven Drew will be opening up a shop on the bath floor of ABC Carpet & Home.

Slated to open on Oct. 20 on the third floor of ABC Carpet & Home here, the new shop will showcase the product lines of Abyss and Habidecor.

For this market, Drew's new products will focus on blended constructions of linen or silk with cotton. The Abyss European towel line will introduce a "new concept in towels," a piece-dyed linen and cotton towel called Anna. "The towels hold up beautifully," said Drew, who is design director for the Abyss and Habidecor lines, adding that the linen construction is stronger than an all-cotton towel. Available in the colors of metal, aubergine, khaki and camel, the towel will have a \$65 retail for a bath size.

The piece-dyed linen and cotton process will also be offered in a coordinating bath rug from Habidecor, the sister company of Abyss. Called New Lys, the rug pattern is of a classic fleur-de-lis, and, like the towel, is constructed of 35 percent linen, 65 percent cotton.

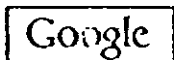
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10/10/2020

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WOODBIDGE

*Domestic and International
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Princeton, New Jersey 08542-0592

Telephone: (609) 924-3773
Facsimile: (609) 924-1811

E-mail: firm@njiplaw.com
Web Site: www.njiplaw.com

November 7, 2002

Richard C. Woodbridge

Stuart H. Nissim*
Thomas J. Onka
John W. Yakimow†

Counsel
Dennis J. Helms

*MD Bar Only
†IL & MI Bars Only

VIA FIRST CLASS MAIL

Katie Johnson-Hill
Habidecor USA, Inc.
P.O. Box 429
Windsor, NJ 08561-0429

RE: New U.S. Trademark Application
"HABIDECOR" in International Class 27

Our Ref: 5524-102US

Dear Katie:

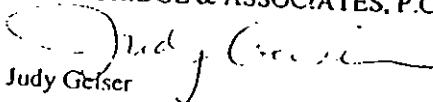
We have this day filed your trademark application for the mark HABIDECOR with the United States Patent and Trademark Office. We elected to submit the application electronically in order to secure the earliest possible filing date. Enclosed please find the electronic version of your application.

The application has been assigned Application Serial No. 78/182,657 with an official filing date of November 7, 2002.

Last, enclosed please find our invoice for services rendered with regard to this matter.

We will continue to keep you informed on the progress of this application. In the meantime, if you have any questions, please feel free to contact us.

Sincerely,
WOODBIDGE & ASSOCIATES, P.C.


Judy Geiser

Enclosure

cc: Larry Borkowski
Richard C. Woodbridge

FILE NO. 5524-102US

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

MARK: HABIDECOR

INTERNATIONAL CLASS: 27

TO THE COMMISSIONER FOR TRADEMARKS:

The Applicant is Habidecor USA, Inc., a corporation of the State of New Jersey having a business address at 92 North Main Street, Building #3C, Windsor, New Jersey 08651-0429.

Applicant requests registration of the above-identified mark shown on the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et seq.) for the following goods/services:

RUGS

In International Class 27

Intent to Use: Section 1(b) Applicant has a bone fide intention to use the mark in commerce on or in connection with the above-identified goods and/or services (15 U.S.C. § 1051(b)).

A check in the amount of \$325.00 is attached to cover the fee for filing the application in one (1) class.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the Applicant; he/she believes the Applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes Applicant to be entitled to use of such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in

commerce, either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her knowledge are true and that all statements made on information and belief are believed to be true.

Please recognize as my attorney: Richard C. Woodbridge, Esq., Reg. No. 26,423, a member of the Bar of the State of New Jersey; Stuart H. Nissim, Esq., Reg. No. 33,541, a member of the Bar of the State of Maryland; John W. Yakimow, Esq., a member of the Bar of the States of Illinois and Michigan; Thomas J. Onka, Reg. No. 42,053, a member of the Bar of the State of New Jersey; and, Dennis J. Helms, Esq., a member of the Bar of the States of New Jersey and New York; all members of the firm of Woodbridge & Associates, P.C., with a mailing address of P.O. Box 592, Princeton, New Jersey 08542-0592, to prosecute this application, to transact all business in connection therewith, and to receive the Certificate of Registration.

PLEASE ADDRESS ALL COMMUNICATION RELATING TO THIS APPLICATION TO:

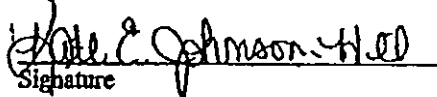
Richard C. Woodbridge, Esq.
WOODBIDGE & ASSOCIATES, P.C.
P.O. Box 592
Princeton, New Jersey 08542-0592

Tel. No. (609) 924-3773
Fax. No. (609) 924-1811

Email: rcw@njiplaw.com

Respectfully submitted,
Habidecor USA, Inc.

By:


Signature

KATE E. JOHNSON-HILL V.P.
Printed Name & Title

Dated: November 6, 2002

ATTY DOCKET NO.: 5524-102 US

APPLICANT: Habidecor USA, Inc.
a corporation of the State of New Jersey

ADDRESS: 92 North Main Street, Building #3C
Windsor, New Jersey 08651-0429

GOODS/SERVICES: Rugs, in International Class 27

FIRST USE: Intent to Use (Section 1(b))

FIRST USE IN COMMERCE: Intent to Use (Section 1(b))

HABIDECOR

Attorney: Richard C. Woodbridge, Esq.
WOODBIDGE & ASSOCIATES, P.C.
P.O. Box 592
Princeton, New Jersey 08542-0592

Telephone: 609-924-3773
Facsimile: 609-924-1811
Email: rcw@njiplaw.com

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HABIDECOR-INDUSTRIA TEXTIL PARA
HABITACAO, S.A. a/k/a HABIDECOR, S.A.,

Opposer,

v.

HABIDECOR USA, INC.,

Applicant.

Opposition No. 91157608

Serial No. 78/182,657



**ORDER SUSPENDING PROCEEDINGS
PURSUANT TO 37 C.F.R. § 2.117(a)**

10-14-2003

U.S. Patent & TMO/TM Mail

Applicant filed, on October 14, 2003, a Motion to Suspend Proceedings pending a final determination of a civil action between the parties pending in the United States District Court for the District of New Jersey, Civil Action No.03-1361, filed March 28, 2003.

A review of the complaint in the civil action indicates that Opposer has charged Applicant with false designation of origin of goods under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and fraudulent registration of the HABIDECOR trademark under 15 U.S.C. § 1120, contending that it is the prior user and proper owner of the mark HABIDECOR and seeking to enjoin Applicant from registering the mark HABIDECOR. It is clear, therefore, that the final determination of the civil action will be dispositive of or have a direct bearing on the proceeding before the Board.

In view thereof, and since a decision by the District Court will be binding on the Board and a decision by the Board will be merely advisory with respect to the disposition of issues presented in the civil action, Applicant's motion to suspend proceedings is granted; therefore,

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HABIDECOR-INDUSTRIA TEXTIL PARA
HABITACAO, S.A. a/k/a HABIDECOR, S.A.,

Opposer,

v.

HABIDECOR USA, INC.,

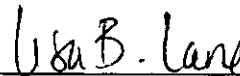
Applicant.

Opposition No. 91157608

Serial No. 78/182,657

CERTIFICATE OF SERVICE

The person whose signature appears below confirms that copies of the foregoing documents have been served upon the Opposer by depositing copies thereof with the United States Postal Service as First-Class Mail, in an envelope addressed to Opposer's counsel of record, David B. Kirschstein, Esquire, at Kirschstein, Ottinger, Israel & Schiffmiller, P.C., 489 Fifth Avenue, New York, NY 10017-6105, this 14th day of October, 2003.



Joseph F. Posillico

Lisa B. Lane

Attorneys for Applicant

SYNNESTVEDT & LECHNER LLP
2600 ARAMARK Tower
1101 Market Street
Philadelphia, PA 19107-2950

Phone: (215) 923-4466

Facsimile: (215) 923-2189